

6-29-2011

State v. Allen Clerk's Record Dckt. 38665

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In the
SUPREME COURT
of the
STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

MARK EDWARD ALLEN, III,

Defendant-Appellant.

CLERK' S RECORD ON APPEAL

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in and
for Nez Perce County

Honorable Carl B. Kerrick, District Judge

Supreme Court No. 38665-2011

Lawrence G. Wasden
~~Attorney for Plaintiff-Respondent~~

Molly J. Huskey
Attorney for Defendant-Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 38665-2011
Plaintiff-Respondent,)	
)	
v.)	
)	
MARK EDWARD ALLEN, III,)	
)	
Defendant-Appellant.)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Nez Perce

HONORABLE Carl B. Kerrick

State Appellant Public Defender
Counsel for Appellant
Boise, ID

Lawrence G. Wasden
Counsel for Respondant
Boise, ID

State of Idaho vs. Mark Edward Allen III

Date	Code	User		Judge
5/9/2008	NCRF	TRISH	New Case Filed-Felony	Greg K. Kalbfleisch
	PROS	TRISH	Prosecutor Assigned Nancy Berger-Schneider	Greg K. Kalbfleisch
	AFPC	TRISH	Affidavit Of Probable Cause	Greg K. Kalbfleisch
	MFPC	TRISH	Magistrate's Finding Of Probable Cause	Greg K. Kalbfleisch
	CRCO	TRISH	Criminal Complaint	Greg K. Kalbfleisch
	SMIS	TRISH	Summons Issued	Greg K. Kalbfleisch
	STAT	TRISH	Case Status Changed: Inactive	Greg K. Kalbfleisch
	HRSC	TRISH	Hearing Scheduled (Arraignment 05/28/2008 01:15 PM)	Jay P. Gaskill
5/19/2008	SMRT	JENNY	Summons Returned - served 5/17/08	Jay P. Gaskill
	STAT	JENNY	Case Status Changed: Activate (previously inactive)	Jay P. Gaskill
5/28/2008	FTAH	DONNA	Hearing result for Arraignment held on 05/28/2008 01:15 PM: Failure To Appear For Hearing Or Trial	Jay P. Gaskill
	WARB	DONNA	Warrant Issued - Bench Bond amount: 5000.00 Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III	Jay P. Gaskill
	STAT	DONNA	Case Status Changed: Inactive	Jay P. Gaskill
8/25/2008	WART	TRISH	Warrant Returned Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III	Jay P. Gaskill
	STAT	TRISH	Case Status Changed: Activate (previously inactive)	Jay P. Gaskill
	ORPD	TRISH	Defendant: Allen, Mark Edward III Order Appointing Public Defender Public defender F & V	Jay P. Gaskill
	ARRN	TRISH	Arraignment / First Appearance	Jay P. Gaskill
	NORM	TRISH	Notification Of Rights-Felony	Jay P. Gaskill
	NTHR	TRISH	Notice Of Hearing	Jay P. Gaskill
	AFFS	TRISH	Affidavit Of Financial Status	Jay P. Gaskill
	ORPD	TRISH	Order Appointing Public Defender	Jay P. Gaskill
8/26/2008	HRSC	TRISH	Hearing Scheduled (Preliminary Hearing 09/03/2008 01:30 PM)	Jay P. Gaskill
		TRISH	Or'd by judge	Jay P. Gaskill
	RQDD	JENNY	Request For Discovery-defendant	Jay P. Gaskill
8/27/2008	RSDP	JENNY	Response To Request For Discovery-plaintiff	Jay P. Gaskill
	RQDP	JENNY	Request For Discovery-plaintiff	Jay P. Gaskill
8/29/2008	DISC	JENNY	Discovery Compliance	Jay P. Gaskill

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
9/3/2008	MINE	BEV	Minute Entry Hearing type: Preliminary Hearing Hearing date: 9/3/2008 Time: 2:22 pm Audio tape number: F1727
	CONT	BEV	Continued (Preliminary Hearing 09/17/2008 01:30 PM)
	WAIP	BEV	Waiver of Speedy Preliminary Hearing
	NTHR	BEV	Notice Of Hearing
9/17/2008	CONT	SHERRI	Continued (Preliminary Hearing 09/24/2008 01:30 PM)
	MINE	SHERRI	Minute Entry Hearing type: Preliminary Hearing Hearing date: 9/17/2008 Time: 1:30 pm Audio tape number: F1733
		SHERRI	Tape # F1733 1627-1684
	NTHR	SHERRI	Notice Of Hearing
9/24/2008	FTAH	BEV	Hearing result for Preliminary Hearing held on 09/24/2008 01:30 PM: Failure To Appear For Hearing Or Trial
9/25/2008	WARB	BEV	Warrant Issued - Bench Bond amount: 5000.00 Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III
	STAT	BEV	Case Status Changed: Inactive
12/4/2008	WART	TRISH	Warrant Returned Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III
	STAT	TRISH	Case Status Changed: Activate (previously inactive)
	HRSC	TRISH	Hearing Scheduled (Pretrial - County P. D. 12/09/2008 09:00 AM)
		TRISH	Notice Of Hearing - Reset
	CONT	TRISH	Continued (Preliminary Hearing 12/10/2008 09:00 AM)
12/5/2008	CONT	TRISH	Continued (Preliminary Hearing 12/10/2008 01:30 PM)
		TRISH	Notice Of Hearing AMENDED
12/9/2008	BNDS	TRISH	Bond Posted - Surety (Amount 5000.00)
12/10/2008	PHWV	SHERRI	Hearing result for Preliminary Hearing held on 12/10/2008 01:30 PM: Preliminary Hearing Waived (bound Over)
	MINE	SHERRI	Minute Entry Hearing type: Preliminary Hearing Hearing date: 12/10/2008 Time: 1:30 pm Audio tape number: CTRM 2 (1:33:26 - 1:36:59, 1:51:36 - 1:53:32)

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
12/10/2008	HRSC	SHERRI	Hearing Scheduled (Arraignment 01/08/2009 01:15 PM)
		SHERRI	Notice Of Hearing
12/11/2008	ORBO	SHERRI	Order Binding Over
12/15/2008	INFO	TERESA	Information
1/8/2009	ARRN	TERESA	Hearing result for Arraignment held on 01/08/2009 01:15 PM: Arraignment / First Appearance
	DCHH	TERESA	District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	PLEA	TERESA	A Plea is entered for charge: - NG (118-8004 {F} Driving Under The Influence)
	HRSC	TERESA	Hearing Scheduled (Jury Trial 05/04/2009 09:00 AM)
	HRSC	TERESA	Hearing Scheduled (Final Pretrial 04/23/2009 03:30 PM)
	HRSC	TERESA	Hearing Scheduled (Pretrial Motions 04/16/2009 02:30 PM)
	MINE	TERESA	Minute Entry Hearing type: Arraignment Hearing date: 1/8/2009 Time: 1:32 pm Court reporter: Nancy Towler Audio tape number: CRTRM 1
1/9/2009	ORDR	TERESA	Order Setting Jury Trial & Scheduling Proceedings
4/10/2009	HRVC	TERESA	Hearing result for Pretrial Motions held on 04/16/2009 02:30 PM: Hearing Vacated--NO MOTIONS FILED
4/23/2009	DCHH	TERESA	Hearing result for Final Pretrial held on 04/23/2009 03:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Final Pretrial 04/30/2009 04:00 PM)
	MINE	TERESA	Minute Entry Hearing type: Final Pretrial Hearing date: 4/23/2009 Time: 3:39 pm Court reporter: Nancy Towler Audio tape number: CRTRM 1
4/30/2009	HRHD	TERESA	Hearing result for Final Pretrial held on 04/30/2009 04:00 PM: Hearing Held
5/1/2009	HRVC	TERESA	Hearing result for Jury Trial held on 05/04/2009 09:00 AM: Hearing Vacated
	HRSC	TERESA	Hearing Scheduled (Change of Plea 05/07/2009 11:00 AM)

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
5/7/2009	DCHH	TERESA	Hearing result for Change of Plea held on 05/07/2009 11:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Change of Plea 05/14/2009 11:00 AM)
	MINE	TERESA	Minute Entry Hearing type: Change of Plea Hearing date: 5/7/2009 Time: 11:02 am Court reporter: Linda Carlton Audio tape number: CRTRM 1
5/14/2009	DCHH	TERESA	Hearing result for Change of Plea held on 05/14/2009 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	PLEA	TERESA	A Plea is entered for charge: - GT (118-8004 {F} Driving Under The Influence)
	HRSC	TERESA	Hearing Scheduled (Sentencing 07/13/2009 02:30 PM)
	PSIO1	TERESA	Pre-Sentence Investigation Evaluation Ordered--DUE 7-9-09
	MINE	TERESA	Document sealed Minute Entry Hearing type: Change of Plea Hearing date: 5/14/2009 Time: 11:05 am Court reporter: Nancy Towler Audio tape number: CRTRM 1
	ORDR	TERESA	PSI Order
5/15/2009	NOPE	TERESA	Notification Of Subsequent Penalties
7/16/2009	DCHH	TERESA	Hearing result for Sentencing held on 07/16/2009 02:30 PM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages
	FTAH	TERESA	Failure To Appear For Hearing Or Trial
	WARB	TERESA	Warrant Issued - Bench Bond amount: 15000.00 Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III
	STAT	TERESA	Case Status Changed: Inactive

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
7/17/2009	MINE	TERESA	Minute Entry Hearing type: Sentencing Hearing date: 7/16/2009 Time: 3:17 pm Court reporter: Linda Carlton Minutes Clerk: TERESA Defense Attorney: F & V Prosecutor: Nancy Berger-Schneider Carl B. Kerrick
7/23/2009		TERESA	Notice of Forfeiture of Surety Bond Carl B. Kerrick
8/10/2009	WARQ	JANET	Warrant Quashed Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III Carl B. Kerrick
	STAT	JANET	Case Status Changed: Activate (previously inactive) Carl B. Kerrick
	HRSC	JANET	Hearing Scheduled (Sentencing 08/20/2009 02:30 PM) Carl B. Kerrick
		JANET	Notice Of Hearing Carl B. Kerrick
	COMM	JANET	Commitment - Held To Answer (release on OR) Carl B. Kerrick
8/20/2009	DCHH	TERESA	Hearing result for Sentencing held on 08/20/2009 02:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	HRSC	TERESA	Hearing Scheduled (Status Conference 09/17/2009 01:15 PM) Carl B. Kerrick
8/21/2009	MINE	TERESA	Minute Entry Hearing type: Sentencing Hearing date: 8/20/2009 Time: 3:09 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: F & V Prosecutor: Nancy Berger-Schneider Carl B. Kerrick
9/17/2009	DCHH	TERESA	Hearing result for Status Conference held on 09/17/2009 01:15 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	WARB	TERESA	Warrant Issued - Bench Bond amount: 5000.00 Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III Carl B. Kerrick
	STAT	TERESA	Case Status Changed: Inactive Carl B. Kerrick

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
9/18/2009	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 9/17/2009 Time: 1:50 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: F & V Prosecutor: Nancy Berger-Schneider Carl B. Kerrick
1/13/2010	WART	TRISH	Warrant Returned Failure to Appear at the time and place ordered by this Court. Defendant: Allen, Mark Edward III Carl B. Kerrick
	STAT	TRISH	Case Status Changed: Activate (previously inactive) Carl B. Kerrick
	HRSC	TERESA	Hearing Scheduled (Status/Scheduling Conference 01/14/2010 01:15 PM) Carl B. Kerrick
		TERESA	Notice Of Hearing Carl B. Kerrick
1/14/2010	DCHH	TERESA	Hearing result for Status/Scheduling Conference held on 01/14/2010 01:15 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	HRSC	TERESA	Hearing Scheduled (Sentencing 04/08/2010 02:30 PM) Carl B. Kerrick
	PSIV	TERESA	Presentence Investigation Ordered due 4-1-10 Carl B. Kerrick
	ORDR	TERESA	PSI Order Carl B. Kerrick
1/15/2010	MINE	TERESA	Minute Entry Hearing type: Status/Scheduling Conference Hearing date: 1/14/2010 Time: 1:21 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: F & V Prosecutor: Nancy Berger-Schneider Carl B. Kerrick
3/31/2010	MISC	TERESA	PSI received--copies delivered by messenger to prosecutor & F & V on 3-31-10 Document sealed Carl B. Kerrick
4/8/2010	DCHH	TERESA	Hearing result for Sentencing held on 04/08/2010 02:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	STAT	TERESA	Case Status Changed: closed pending clerk action Carl B. Kerrick

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
4/8/2010	SNIC	TERESA	Sentenced To Incarceration (I18-8004 {F} Driving Under The Influence) Confinement terms: Penitentiary determinate: 3 years. Penitentiary indeterminate: 2 years.
	MISC	TERESA	Commitment
	PSIS	TERESA	Presentence Investigation Sealed In File Document sealed
	ORDR	TERESA	Confidential Order
4/9/2010	MINE	TERESA	Minute Entry Hearing type: Sentencing Hearing date: 4/8/2010 Time: 2:55 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: F & V Prosecutor: Sandra Dickerson
	MISC	TERESA	Judgment of Conviction
4/13/2010	NOTC	TERESA	Notice of Conviction
8/10/2010	MOTN	TERESA	Motion for Reconsideration of Sentence Under ICR 35
	ORDR	TERESA	Order--Denying Motion for Reonsideration of Sentence
8/11/2010	MISC	TERESA	Memorandum in Support of Motion for Reconsideration of Sentence Under ICR 35
9/15/2010	MOTN	TERESA	Motion for Withdrawal of Guilty Plea--def
	AFFD	TERESA	Affidavit Mark Allen in Support Motion for Withdrawal of Guilty Plea--def
	MOTN	TERESA	Motion for Appointment of Counsel--def
	AFFD	TERESA	Affidavit of Mark Allen in Support Motion for Appointment of Counsel--def
	HRSC	TERESA	Hearing Scheduled (Status Conference 09/30/2010 11:00 AM)
		TERESA	Notice Of Hearing
9/24/2010	MOTN	TERESA	Motion for Telephone Hearing--def
9/30/2010	DCHH	TERESA	Hearing result for Status Conference held on 09/30/2010 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Status Conference 10/07/2010 11:00 AM)
10/1/2010	ATTR	TERESA	Defendant: Allen, Mark Edward III Attorney Retained Danny Radakovich PD 2011

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
10/1/2010		TERESA	Notice of Appointment of New Public Defender
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 9/30/2010 Time: 11:01 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: F & V 2010 Prosecutor: April Smith
10/7/2010	DCHH	TERESA	Hearing result for Status Conference held on 10/07/2010 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Status Conference 12/02/2010 11:00 AM)
10/8/2010	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 10/8/2010 Time: 11:00 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith
12/2/2010	DCHH	TERESA	Hearing result for Status Conference held on 12/02/2010 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Status Conference 12/23/2010 11:00 AM)
12/3/2010	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 12/2/2010 Time: 11:49 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith
12/20/2010	CONT	TERESA	Continued (Status Conference 12/22/2010 11:00 AM)
12/22/2010	CONT	TERESA	Continued (Status Conference 01/06/2011 11:00 AM)

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
12/22/2010	DCHH	TERESA	District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 12/22/2010 Time: 1:18 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith Carl B. Kerrick
1/6/2011	CONT	TERESA	Continued (Status Conference 01/20/2011 11:00 AM) Carl B. Kerrick
	DCHH	TERESA	District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 1/6/2011 Time: 11:40 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith Carl B. Kerrick
1/20/2011	DCHH	TERESA	Hearing result for Status Conference held on 01/20/2011 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Carl B. Kerrick
	HRSC	TERESA	Hearing Scheduled (Status Conference 02/03/2011 11:00 AM) Carl B. Kerrick
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 1/20/2011 Time: 11:13 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith Carl B. Kerrick

State of Idaho vs. Mark Edward Allen III

Date	Code	User	Judge
2/3/2011	DCHH	TERESA	Hearing result for Status Conference held on 02/03/2011 11:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	HRSC	TERESA	Hearing Scheduled (Hearing 02/17/2011 11:00 AM)
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 2/3/2011 Time: 11:09 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: April Smith
2/14/2011	CONT	TERESA	Continued (Hearing 03/03/2011 11:00 AM)
		TERESA	Notice Of Hearing
2/24/2011	MOTN	TERESA	Amended Motion for Withdrawal of Plea of Guilty and Motion for Post Conviction Relief-def
3/3/2011	DENY	TERESA	Hearing result for Hearing held on 03/03/2011 11:00 AM: Motion Denied
	DCHH	TERESA	District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	MINE	TERESA	Minute Entry Hearing type: Motion to Withdraw Guilty Plea Hearing date: 3/3/2011 Time: 11:54 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Danny Radakovich PD 2011 Prosecutor: Sandra Dickerson
	STAT	TERESA	Case Status Changed: closed pending clerk action
3/17/2011	ORDR	TERESA	Order Denying Amended Motion for Withdrawal of Plea of Guilty and Motion for Post Conviction Relief
3/18/2011	APSC	DEANNA	Appealed To The Supreme Court
	NTAP	DEANNA	Notice Of Appeal
	MOTN	DEANNA	Motion to Appoint State Appellate Public Defender

Date: 3/23/2011

Second Judicial District Court - Nez Perce County

User: DIANE

Time: 04:22 PM

ROA Report

Page 11 of 11

Case: CR-2008-0003704 Current Judge: Carl B. Kerrick

Defendant: Allen, Mark Edward III

State of Idaho vs. Mark Edward Allen III

Date	Code	User		Judge
3/21/2011	BVEX	SHELLIE	Surety Bond Converted / Exonerated (Amount 5,000.00)	Carl B. Kerrick

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2008 MAY 9 PM 2 55

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

D.O.B.: [REDACTED]

S.S.N.: [REDACTED]

Defendant.

CASE NO. **CR08-03704**

COMPLAINT - CRIMINAL

STATE OF I D A H O)
: ss.
County of Nez Perce)

PERSONALLY APPEARED Before me this 9 day of May 2008, in the County of Nez Perce, op. Larry Stulik, who, being first duly sworn, complains and says: that MARK E. ALLEN III, did commit the following crime(s):

COUNT I
OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF
ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. §
18-8004(1)(a) and 18-8005(7), a felony


That the Defendant, MARK E. ALLEN III, on or about the 4th day of May, 2008 in the County of Nez Perce, State of Idaho, did drive and/or was in actual physical control of a motor vehicle upon a highway, street, bridge and/or any roadway open to the public, while under the influence of alcohol, drugs and/or any other intoxicating substance while having an alcohol concentration of .08 or more, to-wit: .226/.227 as shown by an analysis of his breath..

That within fifteen (15) years of said date defendant has previously pled guilty to or been convicted of I.C. § 18-8004(1)(a)(b) and/or (c), OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR AN INTOXICATING SUBSTANCE in violation of Idaho Code § 18-8005(5), to-wit:

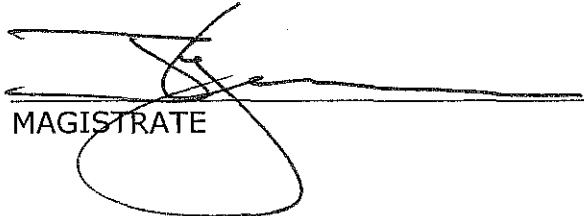
STATE OF IDAHO VS MARK E. ALLEN III, IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS, CASE NO. CR1998-0000071, the Defendant having plead guilty and/or was found guilty on July 15, 1999, Judgment of Conviction entered on May 25, 2000, signed by the Honorable George Reinhardt, and filed by the above-named Court on June 1, 2000.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that MARK E. ALLEN III be dealt with according to law.



SUBSCRIBED and SWORN to before me this 9th day of May 2008.



MAGISTRATE

FILED

2008 MAY 9 PM 2 55

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

Defendant.

CASE NO.

CR08-03704

MAGISTRATES FINDING OF
PROBABLE CAUSE FOR WARRANT OF
ARREST

The undersigned Magistrate having examined under oath Peace Officer CP. LARRY STALK, who seeks a warrant of arrest for the above-referenced defendant, and after having examined said officer's Affidavit and the documents attached thereto, and probable cause having been shown, the undersigned Magistrate hereby finds that probable cause exists to believe that an offense has been committed and that the defendant has committed it, and authorizes the issuance of a warrant of arrest against the above-referenced defendant for the crime(s) of: **COUNT I - OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. §18-8004(1)(a) and 18-8005(7), a felony.**

DATED this 9th day of May 2008.

MAGISTRATE

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2008 MAY 9 PM 2 55

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

Defendant.

CASE NO. **CR08-03704**

AFFIDAVIT OF PROBABLE CAUSE FOR
WARRANT TO ISSUE PURSUANT TO
I.C.R. 4

Comes now the undersigned peace officer who on oath deposes and says:

1. Affiant is a duly qualified peace officer serving with the Lewiston Police Department.

2. Affiant desires that a warrant issue for the arrest of the above-named defendant for the crime(s) of **COUNT I - OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. §18-8004(1)(a) and 18-8005(7), a felony.**

3. Affiant believes probable cause exists for the issuance of this requested warrant; your affiant has attached to this Affidavit and incorporates by reference herein an accurate copy of documents on file with the above-referenced law enforcement agency which form the basis for this request for a warrant.

SUBSCRIBED and SWORN to before me this 9 day of May 2008.

[Signature]
JUDGE OR CLERK OF COURT

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
1 Condrey Barbara	02:08:12 05/05/2008	LEWISTON POLICE DEPARTMENT CAP SHEET AND CASE DISPOSITION SHEET

DATE:

IN CUSTODY: [] YES
[x] NO

=====

DEFENDANT:

Name: Mark E. Allen
Address: 106 Phinney
Lapwai, ID. 83540
Telephone: 836-5454
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]

=====

LEWISTON POLICE DEPARTMENT CASE NUMBER: 08-L7324

OTHER AGENCIES RELATED CASE NUMBERS:

DATE OF INCIDENT: 05-04-08

TIME OF INCIDENT: 1905

=====

CHARGES:

1. Felony DUI
- 2.
- 3.

=====

WITNESSES: (NAME, ADDRESS, PHONE)

1. Officer Brett Dammon, 374
2. Cpl. Eric Kjorness, 297
- 3.
- 4.
- 5.
- 6.
- 7.

=====

CO-DEFENDANTS:

- 1.
- 2.
- 3.
- 4.

=====

EVIDENCE:

1. Vision Hawk recording
- 2.
3. Vision Hawk recording
- 4.
- 5.
- 6.

7.

=====

SUMMARY (PROBABLE CAUSE):

=====

RECOMMENDATION: ☒ WARRANT Because Allen has a history of failing to appear and because he currently has an outstanding arrest warrant through the state of Washington.

☐ SUMMONS

=====

OFFICERS/INVESTIGATORS:

- 1.
- 2.
- 3.

=====

PROSECUTOR to POLICE:

DATE:

- ☐ Charges filed
- ☐ Warrant
- ☐ Referred to Juvenile Services
- ☐ Prosecution delayed for further investigation
- ☐ Prosecution Declined
- ☐ Summons

Assigned Prosecutor:

=====

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

=====

PROSECUTION DECLINED: (EXPLANATION)

=====

CASE DISPOSITION:

- ☐ Guilty plea as charged
- ☐ Guilty plea to other charge:
- ☐ Guilty verdict
- ☐ Not Guilty verdict
- ☐ Other:

05/05/2008
13:30

Lewiston Police Department
LAW Incident Table:

417
Page: 1

Incident Number: 08-L7324

Nature: DUI

Case Number:

Image:

Addr= 1300 F ST

Area: D2B

E OF 8TH, W OF

City: Lewiston

ST: ID Zip: 83501

Contact:

+-- Complainant& 71358 -----+

Lst: LEAVITT

Fst: JASON

Mid: COREY

DOB: / /

SSN: - -

Adr= 1224 F ST

Rac: W Sx: M Tel: (208)746-0171

Cty: Lewiston

ST: ID Zip: 83501

Offense Codes: DUI

Reported: DUI

Observed: DUI

Circumstances:

Rspndg Officers: Leavitt Jason C Dammon Brett Kjorness Eric &

Rspnsbl Officer: Leavitt Jason C Agency: LPD1

CAD Call ID: 893393

Received By: Easley Mary

Last RadLog: 20:23:35 05/04/2008 24

How Received: O Officer Report

Clearance: RPT Written Incident Repo

When Reported: 19:05:17 05/04/2008

Disposition: CAA Disp Date: 05/04/2008

Occurrd between: 19:05:17 05/04/2008

Judicial Sts:

and: 19:05:17 05/04/2008

Misc Entry:

MO:

Narrative: (See below)

Supplement: (See below)

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	1616	05/04/2008	PABLO, KAMI MARIE	Offender
NM	9981	05/04/2008	DANIELS, JASON ELBERT	Involved
NM	71358	05/04/2008	LEAVITT, JASON COREY	*Complainant
NM	97264	05/04/2008	ALLEN, MARK EDWARD III	Offender
VH	119032	05/04/2008	TAN 1981 CHRY IPR ID	Involved
CA	893393	05/04/2008	19:05 05/04/2008 DUI	*Initiating Call
PR	120215	05/05/2008	Vision Hawk \$0	Evidence
PR	120216	05/05/2008	Vision Hawk \$0	Evidence

LAW Incident Offenses Detail:

Offense Codes

Seq Code

Amount

1 DUI DUI Alcohol or Drugs

0.00

LAW Incident Responders Detail

Responding Officers

Seq Name

Unit

1 Leavitt Jason C 372

2 Dammon Brett 374

3 Kjorness Eric 297

4 M71 M71

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
20:23:35 05/04/2008	e	M71	24	FD1E	LFD2	incid#=76192 Assignment Comple
20:12:44 05/04/2008	e	M71	23	FD1E	LFD2	incid#=76192 Arrived at Scene
20:09:46 05/04/2008	e	M71	17	FD1E	LFD2	incid#=76192 st joes call=74e
20:08:31 05/04/2008	e	M71	17	FD1E	LFD2	incid#=76192 st joes time=20:0
20:08:13 05/04/2008	l	372	24	D2B	LPD1	incid#=08-L7324 Assignment Com
19:54:58 05/04/2008	e	M71	23	FD1E	LFD2	incid#=76192 Arrived at Scene
19:54:24 05/04/2008	l	M71	23	D2B	LFD2	Arrived at Scene call=741
19:54:21 05/04/2008	l	M71	17	D2B	LFD2	Enroute call=741
19:30:38 05/04/2008	l	297	CMPLT	D2B	LPD1	(MDC) Completed call incid#=08
19:27:53 05/04/2008	l	297	23	D2B	LPD1	incid#=08-L7324 annex call=741
19:27:08 05/04/2008	l	374	24	D2B	LPD1	incid#=08-L7324 Assignment Com
19:24:11 05/04/2008	l	372	23	D2B	LPD1	incid#=08-L7324 annex em o cal
19:23:47 05/04/2008	l	372	17	D2B	LPD1	incid#=08-L7324 annex bm 0 uni
19:18:07 05/04/2008	l	372	4	D2B	LPD1	82
19:08:49 05/04/2008	l	372	4	D2B	LPD1	on test
19:06:06 05/04/2008	l	372	NMINQ	D1A	LPD1	MDC: NameNumber=97264 Username
19:05:39 05/04/2008	l	297	23	D2B	LPD1	incid#=08-L7324 Arrived at Sce
19:05:31 05/04/2008	l	374	ARRVD	D2B	LPD1	incid#=08-L7324 On-site call=7
19:05:27 05/04/2008	l	372	ARRVD	D2B	LPD1	incid#=08-L7324 On-site call=7

Narrative:

Lewiston Police Department

Incident 08-L7324
Officer Jason Leavitt, #372
May 5, 2008
Typed by: #273

On May 4, 2008, at approximately 1855 hours, I was travelling eastbound in the 1000 block of Main Street. I observed a Tan 1981 Chrysler turn in front of me, off of 10th Street. When this vehicle made the right hand turn, I noticed that it failed to use its right turn signal. I followed behind this vehicle. I was able to activate my vehicle's radar unit and obtained a speed of 32 mph, as it traveled through a 25 mph zone. I followed this vehicle to the intersection of 13th Street & Main Street. The vehicle made a right-hand turn onto 13th Street from Main Street. When it turned, the front tires crossed the double yellow center line. I activated my overhead emergency lights and conducted a traffic stop on this vehicle. The vehicle activated its left turn signal and turned onto F Street and into the Dairy Queen parking lot in the 1300 block of Main Street. The driver appeared not to notice that I had turned on my overhead emergency lights and it continued into the line at the drive-thru at the Dairy Queen.

I exited my car and made contact with the driver. I advised him to pull off to the right and into a parking space, so I could better contact him.

When I initially walked up to the vehicle, I noticed that the passenger had an open can of Keystone Ice in her hand. After the vehicle moved, I repositioned my vehicle and I re-contacted the occupants. I recognized the passenger as Kami Pablo. I asked the driver and other occupants for their information. When the driver spoke to me, I observed he had slurred speech. I noticed that his eyes were watery and bloodshot. I could smell the strong odor of an alcoholic beverage coming from the interior of the vehicle. It appeared that all of the subjects were intoxicated. I asked the driver for the vehicle's information. He looked around and then checked his back pocket on several occasions, appearing to be confused. He did not take anything out of his wallet and told me that he did not have any identification with him. His passenger was able to provide me with the registration for the vehicle.

Cpl Kjorness arrived on scene and acted as my cover officer. I asked the driver of the vehicle if he could tell me his name and he told me his name was Mark E Allen, date of birth [REDACTED]. I had Pablo hand me the can of beer that she had in her hand. The can of beer was approximately 1/2 full. I also noticed there were two more cans in the center console of the vehicle. One can was a 16 ounce can of Steel Reserve Beer and the other was a can of Tilt Beer.

After I identified the subjects in the vehicle and determined they were clear of wants and warrants, I asked Mr. Allen to step out of his vehicle. Allen stepped out of the vehicle and I noticed he was unsteady on his feet and used his left hand, placing it on his vehicle to maintain his balance. Mr. Allen walked to the rear trunk area of his vehicle and I noticed that his wallet was out. I asked Allen if he had identification in his wallet and he told me he

did. Allen opened his wallet up and began searching through it. Allen pulled out a Visa card and placed it on the trunk stating, here you go. I informed Allen this was not a proper identification and he then told me he did not have any identification with him. I was able to pull up a photograph of Allen in my patrol car and positively identified him through my MDC.

I had Mr Allen walk with me in front of my patrol vehicle and informed him I wished him to take some field sobriety tests. Allen agreed. Allen leaned backwards against his vehicle. I asked Allen to just refrain from doing this and stand in a normal fashion. Allen told me he recently had surgery on his neck and it affected his balance and he was not able to walk very well.

I asked Allen if he took medications and he told me he did take several medications including Methadone and Hydrocodone. I asked Allen if he should be taking these medications while consuming alcohol and he told me no.

Test One, Horizontal Gaze Nystagmus. I observed Allen's eyes were watery and bloodshot. Both Allen's pupils were of equal and normal size. I noticed lack of smooth pursuit in both eyes and both eyes tracked equally. I observed distinct nystagmus at maximum deviation in both Allen's eyes and I also observed the onset of nystagmus prior to 45 degrees in both Allen's eyes. I observed vertical nystagmus in both Allen's eyes.

I decided not to have Allen do any evaluations that required him to walk or balance as he told me he had a bad back and recently had surgery on his neck. I informed Allen of the instructions for the Romberg Balance evaluation. Allen failed to tilt his head back as I had instructed him to do so and just stood with his eyes closed. Allen estimated the passage of 30 seconds to be approximately 29 seconds. Allen told me he came up with this time as he had a clock in his head.

I then asked Allen if he knew the english alphabet. Allen told me that he did. Allen told me that he did not do good with counting or the alphabet because of his medications. I asked Allen if he believed his medications caused him to be "impaired" and he told me yes he did. I asked Allen to recite the alphabet, A-Z. Allen recited a portion of the alphabet and then began slurring and talking very quietly and I could not understand what he said and he was unable to finish. Refer to the audio.

I then asked Allen if he would be willing to do a simple counting test and he told me he did not believe he would be able to. At this time I informed Allen I felt he was under the influence and I placed him into custody for driving under the influence. Allen was pat searched and due to his medical conditions I handcuffed him with his hands in front of him. Allen was then escorted to the rear of my patrol car where he was then seated inside.

I transported Allen to the annex and walked with him into the annex. I observed the time on the Intoxilyzer to be 19:30. I checked Allen's mouth for foreign objects, finding none. I played the 18-8002 advisory form to Allen. After the playing of the 8002 advisory form, Allen told me he understood.

I then programmed the Intoxilyzer 5000EN after the 16 minute observation period. I allowed Allen to submit a breath sample. At 19:51 Allen submitted to the first sample with the results being .226. At 19:51 Allen's submitted to the second sample with the results being .227.

Allen at this time began complaining that he had diabetes and felt his blood sugar was off. I requested medics respond to the annex, which they did. The medics checked Allen blood sugar and advised his blood sugar was high and that he would need to be transported to get this under control. Because of Allen medical status, I decided to release him to be treated at the hospital. I prepared citation #112764, charging Allen for driving without privileges as he was suspended in Washington from 01/27/08 until 01/27/11 for DUI. I also prepared citation #112765 charging Allen with violation of a restricted drivers license, as Washington required him to have an interlock device in his vehicle. I also cited Allen for failure to carry insurance.

Allen had a felony DUI conviction on 05/25/00. I will be preparing a CAP sheet charging Allen with felony DUI.

I also cited Kami Pablo with open container of alcohol, CC 6-2. Pablo was given a court date no later than 05/15/08 and signed the citation as a promise to appear. She was also issued a citation for failure to wear a seatbelt.

End of report.
Ofc J. Leavitt #372

DR # 09-27329

Allen	Mark	E	
Last Name	First	Middle	Date of Birth
P.O. Box 507			
Mailing Address			
Camden	IN	83540	
City	State	Zip	

Alca Qero	5-7-03	1:13
County of Arrest	Date of Arrest	Time of Arrest
[REDACTED]	D	
Idaho Driver's License Number	License Class	Restrictions
Out-of-State Driver's License Number	State	Operating CMV? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Citation #: Felony CAD	Transporting Hazmat? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

1. I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances.
2. You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing.
3. You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
4. If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
 - A. You are subject to a civil penalty of two hundred fifty dollars (\$250).
 - B. Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - C. You have a right to submit a written request within seven (7) days to the Magistrate Court of Alta County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
 - D. If you do not request a hearing or do not prevail at the hearing, the court will sustain the civil penalty and your license will be suspended with absolutely no driving privileges for one (1) year if this is your first refusal; and two (2) years if this is your second refusal within ten (10) years.
5. If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
 - A. Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - B. I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
 - C. You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.

— PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION —

Date of Service: 5-4-07

 Evidentiary Test Failure: §18-8002A ☐ **Refusal:** (original copy to court) §18-8002 ☐ **Urine/Blood Analysis Pending:** §18-8002A

Permit Issued? ☐ Yes ☒ No License Surrendered? ☐ Yes ☒ No
A permit was not issued because the license was: ☐ Suspended ☒ Not in Possession ☐ Invalid
☐ Expired ☐ Issued by Another Jurisdiction ☐ Not Licensed

Signature of Reporting Officer: 	Print Name and I.D. Number of Reporting Officer (PRINT) James Leavitt 373	Agency Code 3502	Telephone Number 25-0171
--	--	---------------------	-----------------------------

SUSPENSION INFORMATION: The audio version of the suspension advisory substantially conforms to the written text and is a suspension advisory.

FOR REFUSAL OF EVIDENTIARY TESTING (PURSUANT TO SECTION 18-8002, IDAHO CODE):

You have the right to submit a written request within seven (7) days to the Magistrate Court indicated on the face of this notice for a hearing to show cause why you refused to submit to or complete evidentiary testing. This is your opportunity to show cause why you refused to submit or failed to complete evidentiary testing and why your driver's license should not be suspended. **NOTE: A HEARING REQUEST FOR REFUSING EVIDENTIARY TESTING MUST BE SUBMITTED TO THE MAGISTRATE COURT.**

If you fail to request a hearing or do not prevail at the hearing, you are subject to a \$250 civil penalty and the court will suspend your driver's license and privileges with absolutely no driving privileges for one (1) year for your first offense, or for two (2) years for your second offense within ten (10) years.

FOR FAILING EVIDENTIARY TESTING (PURSUANT TO SECTION 18-8002A, IDAHO CODE):

You have been served this *Notice of Suspension* by a peace officer who had reasonable grounds to believe that you were operating a vehicle while intoxicated. Section 18-8002, Idaho Code requires you to take an evidentiary test or tests to determine your alcohol concentration and/or the presence of any drugs or other intoxicating substances. After submitting to the test(s), you may, when practicable, have additional tests conducted (at your own expense).

If you take the evidentiary test(s) and the results indicate an alcohol concentration of .08 or greater (.02 or greater if you are under 21 years of age), or the presence of drugs or other intoxicating substances in violation of the provisions of Sections 18-8004, 18-8004C, and 18-8006, Idaho Code, the peace officer shall:

1. A. Seize your driver's license, (unless you are an out-of-state resident).
 - B. Issue you a temporary driving permit which shall be valid for thirty (30) days from the date of service indicated on the reverse side of this *Notice of Suspension*, if you have surrendered a current valid Idaho license. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
 - C. Serve you with this *Notice of Suspension* that becomes effective thirty (30) days after the date of service indicated on the reverse side of this notice. Failure of an evidentiary test will result in a ninety (90)-day suspension of driving privileges, with absolutely no driving privileges during the first thirty (30) days of the suspension. You may request restricted driving privileges during the final sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind.
2. If you were operating or in physical control of a commercial vehicle and the evidentiary test results indicate an alcohol concentration of:
 - A. .04 to less than .08, your commercial driving privileges will be suspended for ninety (90) days. You will have absolutely no commercial driving privileges of any kind. Any temporary permit issued will be for Class D (non-commercial) driving privileges only.
 - B. .08 or greater (.02 or greater if you are under 21 years of age), or test results indicate the presence of drugs or other intoxicating substances, all of your driving privileges will be suspended for ninety (90) days, with possible Class D driving privileges for the final sixty (60) days of the suspension. You will have absolutely no commercial driving privileges of any kind during the full ninety (90)-day suspension.
 - C. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year (you will have absolutely no driving privileges of any kind).

HEARING REQUEST FOR FAILURE OF EVIDENTIARY TEST:

You have the right to request an administrative hearing on the suspension **BEFORE THE IDAHO TRANSPORTATION DEPARTMENT**. Your request must be made in writing and be received by the department no later than seven (7) calendar days after the date of service of this *Notice of Suspension*. The request must state the issues intended to be raised at the hearing, and must include your name, date of birth, driver's license number, date of arrest, and daytime telephone number because the hearing will be held by telephone. The burden of proof, by preponderance of evidence, shall be upon the driver as to the issues raised in the hearing, pursuant to Section 18-8002A(7), Idaho Code.

If you request a hearing, it shall be held within twenty (20) days of the date the hearing request was received by the Idaho Transportation Department. (Section 18-8002A, Idaho Code) If you do not request an administrative hearing within seven (7) days of service of this *Notice of Suspension*, your right to contest the suspension is waived. This suspension is separate and apart from any suspension that may be ordered by the court as a result of any criminal charges that may be brought against you.

JUDICIAL REVIEW:

You may appeal the decision of the Hearing Officer by seeking judicial review to the District Court. (Section 18-8002A, Idaho Code). Your appeal must be filed as a civil proceeding in District Court, pursuant to Chapter 52, Title 67, Idaho Code.

RESTRICTED DRIVING PERMITS:

If your driving privileges are suspended for a period of ninety (90) days pursuant to Section 18-8002A, Idaho Code, you may request restricted driving privileges for the final sixty (60) days of the suspension (IDAPA Rule 39.02.70.) Restricted driving privileges will not allow you to operate a commercial motor vehicle. You may make your written request for restricted driving privileges any time after the service of this *Notice of Suspension*.

REINSTATEMENT REQUIREMENTS:

Before being reinstated on this suspension, you will be required to pay a reinstatement fee. Any other suspension imposed by the court for this offense will require an additional reinstatement fee.

To request an administrative hearing or apply for a restricted driving permit relating to an administrative license suspension for failing evidentiary testing:

- Make your request in writing (including a daytime telephone number) to the Idaho Transportation Dept., Driver Services Section, PO Box 7129, Boise, ID 83707-1129, OR
- Deliver your request in person to the Driver Services office (3311 West State Street, Boise), OR
- Fax your request to Driver Services at (208) 332-4124.

If you have questions or need additional information regarding this notice or your driving privileges, call Driver Services at 334-8735.

LEWISTON POLICE DEPARTMENT

ALCOHOL/DRUG INFLUENCE REPORT

Was an audio/video recording obtained? ☒ Yes ☐ No Incident # 08-L7324
 What alcohol have you been drinking? _____ How much? _____
 With Whom? _____ Where? _____ Time of last drink? _____
 Do you believe you are drunk? _____ Under the influence? _____
 Has your drinking affected your driving? _____ Are you taking any medicine(s) or drugs? _____
 (If yes) What kind? _____
 Are there any questions you did not understand? _____
 Which one(s)? _____

OBSERVATIONS:

Describe Clothing: (TYPE, COLOR, ETC.)

Condition of Clothing: ☐ Orderly ☒ Disorderly
☐ Soiled ☐ Urinated ☐ Other (explain) _____

Eyes: ☐ Normal ☒ Watery ☒ Bloodshot ☐ Sleepy

Pupils: ☐ Normal ☐ Constricted ☒ Dilated
☐ Poor Reaction to Light

Face: ☐ Normal ☐ Pale ☐ Flushed ☒ Sweaty

Speech: ☐ Normal ☒ Slurred ☐ Stuttered ☐ Fair
☐ Incoherent ☐ Confused ☐ Correct Enunciation

Breath: ☒ Odor of Alcoholic Beverage ☐ None ☐ Faint
☒ Moderate ☐ Strong

Exiting Vehicle: ☐ Sure ☒ Unstable ☐ Lost Balance
☒ Used Vehicle to Maintain Balance ☐ Falling

Walking: ☐ Normal ☒ Unsteady ☐ Swaying ☐ Falling
☐ Staggering ☐ Needed Assistance

Turning: ☐ Normal ☒ Hesitant ☐ Losing Balance
☐ Swaying ☐ Falling ☒ Needed Assistance

Stationary Position: ☐ Normal ☒ Swaying ☐ Falling
☐ Sagging Knees

Ability to Retain and Follow Simple Instructions:
☐ Good ☒ Fair ☐ Poor ☐ Interrupting
☐ Nuisance ☐ Attempt Test Before/During Instruction

Attitude: ☐ Polite ☒ Cooperative ☐ Antagonistic
☐ Carefree ☐ Indifferent ☐ Talkative ☐ Cocky
☐ Insulting ☐ Aggressive ☐ Combative ☐ Sleepy
☐ Hostile ☐ Profane

LEWISTON PD
 INTOXILYZER - ALCOHOL ANALYZER
 MODEL 5000EN SN 68-012541
 05/04/2008 SOLUTION LOT NO. 0000007801

SUB NAME=ALLEN, MARK, E
 SUB DOB =04/02/65
 O. L. N. =ID/KA117368B
 OPER NAME=LEAVITT, JASON, C
 ARREST AGENCY=3502

TEST	BRAC	TIME
AIR BLANK	.000	19:49 PDT
INTERNAL STANDARDS PASSED		19:49 PDT
AIR BLANK	.000	19:49 PDT
SIMULATOR TEMPERATURE IN RANGE		
SIM CHK. #0012	.082	19:50 PDT
ACCEPTABLE		
AIR BLANK	.000	19:50 PDT
SUBJECT TEST	.226	19:51 PDT
AIR BLANK	.000	19:51 PDT
SUBJECT TEST	.227	19:51 PDT
AIR BLANK	.000	19:52 PDT

OPERATOR'S SIGNATURE

TIME FIRST OBSERVED 1930
 SUBJECT'S NAME Allen

TIME FIRST OBSERVED

INSTRUMENT LOCATION Annex

OPERATOR Jason Leavitt

ADDITIONAL INFORMATION AND/OR REMARKS

INTOXILYZER® INSTRUMENT PRINTER CARD

© 1986 by CMLINC

EMI

CONSTITUTIONAL RIGHTS WARNING:

NAME: Mark Allen

PLACE: Annex

DATE: 5.4.08 TIME: _____

OFFICER: J. Law # 372

1. You have the right to remain silent,
2. Anything you say can and will be used against you in a court of law,
3. You have the right to talk to a lawyer and have him present while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning begins if you wish.
5. If you answer any questions now without a lawyer present you can stop at any time until a lawyer is present, or refuse to answer any questions until a lawyer is present.

I have read the above statement of my rights and hereby acknowledge that I have received and understand them, at the time and place so stated. I do not want a lawyer present at this time. No promises or threats have been made and no pressure of any kind has been used against me.

WITNESS

DEFENDANT

OFFICER

I have read the foregoing statement of constitutional rights to _____ and he/she has refused to acknowledge the fact that he/she has received them at the time and place so stated.

WITNESS

OFFICER

CC: DISTRICT COURT

ERM00 Message Received From NLETS

DR.WADMV0099

18:56 05/04/2008 50341

18:56 05/04/2008 00328 ID0350205

*MRI8074262

TXT

OLN/ALLENME355JB

SOC/ 05-04-08

RESTRICTIONS:

ALLEN, MARK EDWARD III

DOB/ MALE

AREA/EQP

R/1732 5TH STREET APT 6

EYE/BRN;HGT/5-08;WGT/260

R/LEWISTON

ID 83501

PROB LICENSE STATUS EFF DATE 012708 ENDS 012713

PDL:ID ONLY

EXP/04-02-95 DUI/PC 01 VH 00 CDL:STATUS: NONE

STATUS: DWLS/R 3RD

RD/DUI 00 VA 00

DWLS/R 1ST:00 DWLS/R 2ND:00 DWLS/R 3RD:00

RESTR EXPL: INTERLOCK REQ 012708-012709

PDL RECORD -SUSP ACTDTE: 01-27-08 REAS:DUI TIME SERVED

RELDTE: 01-27-11

DONOR: N

MRI 8074268 IN: NLI1 21656 AT 20:00 04MAY08

OUT: PLW5 518 AT 20:00 04MAY08

TERM00 Message Received From DMV

KR.ID0350205.DMV .*MRI8074262.TXT

NAM/ALLEN, MARK E.DOB [REDACTED].SEX/M

MAY BE THE SAME AS: PAGE 01 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
OLN [REDACTED]. PRIVACY FLAG.

NAM/ALLEN, MARK EDWARD 3RD.

** OPR STATUS/EXPIRED.

RES/

** CDL STATUS/PENDING ISSUE.

28418 LOBO LANE

CLASS/D. ** EXP/04-02-2000.

CULDESAC

ID 83524.

OLT/DRIVER LICENSE.

MAIL/

RT 1 BOX 92

CULDESAC

ID 83524.

SEX/M. HAI/BLK. EYE/BRO. DOB/[REDACTED]. SOC/[REDACTED] ORGAN DONOR
HGT/508. WGT/250. ISS/02-15-1996. REC/350960460005. CNTY/NEZP.

AKA OLN/[REDACTED]

AKA OLS/ID.

SUSP/05-21-1998.UNTL/08-19-1998. ALS08+ORDRUG. REIN FULL.08-19-2001.OP

SUSP/06-23-1998.UNTL/09-21-1998. INFRACTIONS. REIN FULL.09-21-2001.OP

SUSP/06-25-1998.UNTL/09-23-1998. INFRACTIONS. REIN FULL.09-23-2001.OP

CITN/10-13-1998C. 10-13-1998A.DUI.

CTY.LEWISTON.

ORD DEGREE/MISD.

SUSP/10-13-1998.UNTL/01-11-1999. DUI.

FULL.SR22.01-11-2002.OP

CITN/05-25-2000C. 04-21-1998A.DUI FELONY.

ISP.LEWIS.

ORD DEGREE/FLNY.

ADDITIONAL LICENSE TYPES CONTINUED ON NEXT PAGE...

MAY BE THE SAME AS: PAGE 02 FOR OFFICIAL INVESTIGATION PURPOSES ONLY

***** IDAHO IDENTIFICATION CARD ONLY - NOT A DRIVERS LICENSE *****

OLN [REDACTED].

PRIVACY FLAG.

NAM/ALLEN, MARK EDWARD 3RD.

ID CARD STATUS/EXPIRED.

RES/

28418 LOBO LANE

** EXP/04-02-2007.

CULDESAC

ID 83524.

OLT/IDENTIFICATION CARD.

SEX/M. HAI/BLK. EYE/BRO. DOB/[REDACTED]. SOC/[REDACTED] ORGAN DONOR
HGT/508. WGT/250. ISS/06-03-2003. REC/350031540017. CNTY/NEZP.

AKA OLN/[REDACTED]

AKA OLS/ID.

END OF RECORD

END OF MESSAGE...

MRI 8074263 IN: DMVIO1 14869 AT 20:00 04MAY08

OUT: PLW5 515 AT 20:00 04MAY08

05/05/2008
13:33

Lewiston Police Department
Main Names Table:

417
Page: 1

Name Number: 97264
Last: ALLEN Fst: MARK Mid: EDWARD III
Addr= 28418 LOBO LN Prev: 36626 us hwy 12
City: Culdesac ST: ID Zip: 83524 Lenore & ID 83501
Deceased: / / Alias For:
Personal Identification
DL Numbr: [REDACTED] Name Typ: INDIVR SSN: [REDACTED]
DL State: ID Class: Image: PHO Local ID:
Home Tel: (208) 836-5454 State ID:
Work Tel: () - FBI Number:

Physical Description

DOB: [REDACTED] 43 yrs Eyes: BRO Brown Cmplxn: FAIR Fair
Race: I Indian or Ala Glasses: W Wireframe Speech: ART Articulate
Sex: M Male Hair: BRO Brown Teeth: STR Straight
Height: 5'08" 173 cm Hstyle: LONG Long Build: RTND Rotund
Weight: 210lbs 95+kg Beard: N No Beard - Ethnic:
Traits SMT: EXTR& & SCAR RT. WRIST &
MO:

Alert Codes:

Comments: (See below)

Premis: Xtra: & Visited Inmates: & Had Visitors: & Merge:

= = = = =

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
WA	00-W1475	01/17/2002	FTP/PUBLIC NUISANCE	*Recalled, Returned t
WA	00-W2088	01/17/2002	FTP/Disturbing the Peace	*Recalled, Returned t
WA	99-W2454	11/02/1999	BW FTA OTSC DUI	*Served, Returned to
WA	99-W2447	11/01/1999	OCW-Bw Fail to Participate Alc	*Served, Returned to
WA	99-W945	06/15/1999	BW/FTA SHOW CAUSE DISTURBING T	*Served, Returned to
WA	99-W1114	06/15/1999	FTP/DUI	*Served, Returned to
WA	98-W1686	06/27/1998	FTP/DIST THE PEACE	*Served, Returned to
WA	98-W745	03/27/1998	FTP/Disturbing the Peace	*Served, Returned to
WA	98-W785	03/27/1998	BW/FTA FINAL PRETRIAL DUI	*Recalled, Returned t
WA	97-W509	08/14/1997	FTP/DISTURBING THE PEACE	*Served, Returned to
WA	96-W1366	10/30/1996	CIVIL PROTECTION ORDER (TEMP)	*Recalled, Returned t
JM	06-J4431	12/15/2006	Out of County Warrant	*Arrested
JM	06-J940	03/14/2006	Out of County Warrant	*Arrested
JM	99-J4150	06/04/2000	Public Nuisance	+ *Arrested
JM	99-J2217	09/05/1999	FTP Warrant	+ *Arrested
JM	97-J4609	11/24/1998	Injury to Children	+ *Arrested
JM	96-J2449	07/01/1998	Disturbing the Peace	+ *Arrested
JM	94-J1950	07/01/1994	Probation/Parole Violation	*Arrested
JM	94-J1715	06/06/1994	Obstructing Officer	+ *Arrested
JM	30826J	02/12/1992	DUI Alcohol/Drugs	*Arrested
JM	29998J	10/03/1991	DUI Alcohol/Drugs	*Arrested
JM	29868J	09/13/1991	Reckless Driving	+ *Arrested
JM	29661J	08/11/1991	DUI Alcohol/Drugs	+ *Arrested
JM	27847J	10/19/1990	Warrants / Bench / Contempt	*Arrested

JM	23962J	02/03/1989	Open Container in Vehicle	+	*Arrested
JM	22942J	08/11/1988	DUI Alcohol/Drugs		*Arrested
JM	21702J	01/01/1988	Warrants / Bench / Contempt	+	*Arrested
JM	21635J	12/18/1987	DUI Alcohol/Drugs		*Arrested
JM	21326J	10/14/1987	DUI Alcohol/Drugs		*Arrested
JM	21068J	08/18/1987	Malicious Injury to Property		*Arrested
JM	1167J	11/13/1986	Fictitious Display	+	*Arrested
JM	1166J	10/11/1986	Trespassing	+	*Arrested
CP	99-C2123	06/01/1999	Defendant Subpoena-Criminal		*Do Not Serve
CP	99-C122	01/22/1999	Defendant Summons and Complain		*Served, Returned to
CP	98-C1666	05/11/1998	Defendant Motion		*Served, Returned to
CP	97-C4712	12/18/1997	Defendant Subpoena-Criminal		*Do Not Serve
CP	97-C4713	12/18/1997	Defendant Subpoena-Criminal		*Do Not Serve
CP	96-C2618	07/15/1996	Other Order		*Do Not Serve
CP	96-C2450	07/09/1996	Other ExParte Temp Protection		*Served, Returned to
LW	08-L7324	05/04/2008	DUI		Offender
LW	07-T1725	07/03/2007	1Medical		Involved
LW	07-L10755	06/17/2007	Suspicious		Involved
LW	06-N8951	11/29/2006	Domestic		involved
LW	06-L15747	09/08/2006	DUI		Involved
LW	06-L8153	05/16/2006	1Medical		Involved
LW	06-N3104	05/09/2006	Unwanted Person		SUSPECT
LW	06-L4111	03/13/2006	Inj Collision		Offender
LW	05-N3755	06/15/2005	Forgery		Suspect
LW	05-N3609	06/08/2005	DUI		arrested
LW	05-L4608	03/21/2005	Threats		Involved
LW	04-L18530	10/01/2004	Agency Assist		Mentioned
LW	04-L8717	05/15/2004	Unwanted Person		Mentioned
LW	04-L8705	05/14/2004	Bar Check		Mentioned
LW	03-L15923	09/04/2003	Prowler		*Complainant
LW	99-L18374	11/01/1999	Suspicious		Offender
LW	98-N3726	06/27/1998	Wanted Person		Defendant
LW	97-L20200	11/11/1997	Traffic Offense		Offender
LW	97-N4082	08/14/1997	Wanted Person		Arrest
LW	97-N716	02/20/1997	Unwanted Person		SUSPECT
LW	96-N1939	07/08/1996	Domestic		Contacted by BIA
LW	96-N1940	07/08/1996	Unwanted Person		Suspect
LW	96-L11317	07/05/1996	Custodial Int.		*Complainant
LW	96-L11083	07/02/1996	Domestic		Offender
LW	96-N1766	06/24/1996	Intoxication		Suspect
VH	93305	03/21/2005	SIL 1991 FORD AEROSTAR ID		*Owner
VH	23680	09/12/1997	WHI 1980 DODG OMNI ID		*Owner
CA	769776	09/04/2003	03:27 09/04/2003 Prowler		*Complainant
CA	128154	07/05/1996	08:26 07/05/1996 Custodial Int		*Complainant
PR	48073	11/11/1997	STS Firearm-Gun Winchester \$0		*Owner
PN	47647	05/14/2007	BIKE TREK		*Pawned Property
PN	20015	05/09/2005	COMP PLAY STATION II		*Pawned Property
PN	12383	02/21/2005	CLOT ST JOHNS BAY		*Pawned Property
PN	12433	02/21/2005	CLOT STEFANO		*Pawned Property
PN	3295	01/11/2005	HOMA SHARP		*Pawned Property
PN	15899	01/06/2005	RECO		*Pawned Property
PN	15900	01/06/2005	JEWL		*Pawned Property
PN	5916	08/24/2004	COMP PLAY STATION II		*Pawned Property
PN	10074	06/26/2004	HOMA PLAYSTATION 2		*Pawned Property

Name history:

Name/Address/Phone History								
Expired	Address	City	ST	Zip	Phone	Last Name	First	M
12/15/2006	36626 us hwy 1	Lenore	ID	83501	(208)	ALLEN	MARK	ED
11/29/2006	2125 3RD AVE N	Lewiston	ID	83501	(208)	ALLEN	MARK	ED
03/13/2006	"28418 LOBO LA	Culdesac	ID	83524	(208)79	ALLEN	MARK	ED
03/30/2005	2525 8th Stree	Lewiston	ID	83501	(208)74	ALLEN	MARK	ED
10/01/2004	1732 5th Stree	Lewiston	ID	83501	(208)74	ALLEN	MARK	ED
09/04/2003	28418 LOBO LAN	Culdesac	ID		(208)83	ALLEN	MARK	ED
06/03/2003	21760 CAMAS LA	Culdesac	ID		(208)83	ALLEN	MARK	ED
04/15/2002	"Rt 1 Box 92	Culdesac	ID		(208)83	ALLEN	MARK	ED
10/15/1998	"Rt 1 Box 92	Culdesac	ID	83524	()	ALLEN	MARK	ED
05/21/1996	Cottonwood Cr	Culdesac	ID		()	ALLEN	MARK	ED
06/22/1994	Cottonwood Cr	Culdesac	ID	83524	()	ALLEN	MARK	ED
10/04/1993	RT 1 COTTENWOO	PO 151 CUL	ID		()	ALLEN	MARK	ED

Image codes for names:

Seq Code		Image Codes	
		Id	Description
1	PHO PHOTOGRAPH	12/15/06	OCW

Scars/Marks/Tattoos Detail:

Scars, Marks, Tattoos, and Other Characteristics					
Seq	NCIC Code	Type	Pos	Part	Comments
1		EXTR			SCAR RT. WRIST
2	SC NOSE	Nose	SC		NOSE MISSING TIP OF NOSE
3	SC NECK	Neck	SC		NECK " scar back of neck
4	SC NECK	Neck	SC	FL	NECK 3" scar front of neck

Miscellaneous comments:

Enrolled tribal Following data is from name #1500J, merged by Felton Cindy on 15 :10:22 10/15/98 :
Miscellaneous comments
Aka: Buffalo

Additional Name Information:

Name ID Number:	97264	III	First: MARK	Mid: EDWARD
Last: ALLEN			Phone: (208)836-5454	
Addr& 28418 LOBO LN				
City: Culdesac	ST: ID	Zip: 83524	DOB: [REDACTED]	SSN: [REDACTED]
Birth City: LEWISTON	State: ID		Education: 12 years	
Citizenshp: US	United States		Shoe Size: 10	
Birth Country:			Cover Size: XXL	
Religion:			Misc. Size:	
Marital: N	Never Married		Commissary: Y	Yes
School: LAPWAI HIGH			Relationship: FA	Father
Contact: MARK ALLEN			Phone: (208)836-5441	
Address: RT 1 BOX 81BA CULDESAC ID			Employer Phone: ()	-
Employer: unemployed			Job Phone: ()	-
Address:			Date Hired: / /	
Job Desc: labor farm hand			Super Work Phon: ()	-
Job Locatn:			Super Home Phon: ()	-
Supervisor:			Prob Officer:	
Probation:			Attorney:	
Henry:				
			NCIC Print:	

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

Defendant.

CASE NO. **CR08-03704**

SUMMONS IN CRIMINAL
PROCEEDING

RECEIVED
HOUR **1433 A.M.** P.M.

MAY 13 2008

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501

BY: 

THE STATE OF IDAHO TO THE ABOVE-NAMED INDIVIDUAL:

You are hereby summoned to appear before a Magistrate of the above-entitled Court at the Courthouse in Lewiston, Nez Perce County, Idaho, located near the intersection of 13th and Main Streets, on the **28th day of May, 2008, at 1:15 p.m.**, for the crime(s) of: COUNT I - OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. §18-8004(1)(a) and 18-8005(7), a felony.

For your failure to appear at said time and place, a warrant will issue for your arrest.

DATED this 9th day of May 2008.


MAGISTRATE JUDGE

PEACE OFFICER'S RETURN

I hereby certify that I received the within Summons on the _____ day of _____, and served the same upon _____ by showing the original and providing a copy of the same as well as a copy of a Criminal Complaint to _____ and by personally informing of their contents on the _____ day of _____, at _____ in the City of _____, in the County of Nez Perce, State of Idaho.

PEACE OFFICER

SUMMONS

10:11 05/19/08

FILED
State of Idaho
Nez Perce County Sheriff
Civil Division
Lewiston, ID 83501 0896
2008 MAY 19 PM 4 26

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

Court Number: CR0803704

DEPUTY

Process Number: 08-C1600

I, Jim Dorion, of Nez Perce County Sheriff do hereby certify that I received the within and foregoing Summons and Complaint-Criminal on 13th day of May, 2008, and that I served the same on:

MARK EDWARD ALLEN III

(Defendant)

106 PHINNEY DR

Lapwai, ID 83540

Served on: 17th day of May, 2008 at 10:33:00

by Santos Patrick

Served to: MARK ALLEN III

Defendant

106 PHINNEY DR

Lapwai, ID 83540

Returned on the 19th day of May, 2008

I also certify that I endorsed on the said copy the date of service, signed my name, and added my official title thereto.

Dated the 19th day of May, 2008

Fees:

Service:	0.00
Mileage:	0.00
Other :	0.00
Total :	0.00

Jim Dorion
Nez Perce County Sheriff, Idaho

BY: 
Authorized Representative
Civil Division

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State v. Mark E. Allen III JUDGE JAY P. GASKILL
HEARING TYPE Initial Arraignment CLERK DONNA EVANS
PLF ATTORNEY _____ TAPE # F-111
DEF ATTORNEY _____ CASE # CR08-3704
OTHERS PRESENT _____ DATE 5-28-08
TIME 1:15 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present with/without counsel

Δ PTA = 2:00pm

Court advises Def of rights and charges

9 max penalties

Court sets Preliminary Hearing for

at 1:30 PM

Def requests court appointed counsel and signs Affidavit

Court Appoints

to represent Def

Bond:

Recess

warrants = 5000.00

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

RECEIVED
HOUR 22:50 A.M.

MAY 29 2008

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501

BY: NR

STATE OF IDAHO
Plaintiff,

vs.

Mark Edward Allen III

106 Phinney
Lapwai, ID 83540

Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED] ID

2008 AUG 25 AM 7 10)
PATTY WEEKS
CLERK OF THE DIST. COURT
DEPUTY
Shynolds

Case No: CR-2008-0003704

BENCH WARRANT

TO ANY SWORN PEACE OFFICER IN THE STATE OF IDAHO:

The Defendant in the above captioned case, having failed to appear for the following court hearing:

Felony Arraignment: May 28th, 2008 at 1:15 p.m.
Judge: Jay P. Gaskill
Courtroom: Nez Perce County Courthouse

Said Defendant having been released upon his/her own recognizance;

NOW, THEREFORE, THIS IS TO COMMAND YOU to forthwith arrest the above named Defendant and bring him/her before this Court.

Dated: 5/28/2008

Judge: [Signature]

May be served: Day Only
Day or Night

Bond Amount: \$5000.00

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the above named Defendant on this 23 day of August, 2008.

Officer: [Signature] / 376

Agency: 2PD

Bench Warrant

DOC23 7/88

CRO 8-3704 ✓

08/25/2008
01:24

Nez Perce County Sheriff
Jail Log:

Page: 564
1

Event Number: 636862 Active
Name ID: 97264 Confined

-----+-----
| Last: ALLEN III First: MARK Mid: EDWAR |
| Addr: po box 507 Phone: (208) 843-2336 |
| City: Lapwai ST: ID Zip: 83501 DOB: [REDACTED] SSN: [REDACTED] |
+-----+-----

Time/Date of Event: 01:26:10 08/25/2008 Treatment Date:
Type of event: MED Medical Event
Quantity: 0.00
Officer: Smith, Richard A
Booking Number: 08-J2877
Description:
(See below)

=====

Description:

Tonight while dispensing medications, subjects blood sugar was taken. It was 235. I called corporal Roberts and he advised me to transport subject to St. Joes. While there in admissions, his blood pressure was 212/112, blood sugar was 221. The nurse indicated these were potential readings for a stroke. Subject was seen by Doctor Hocum, he prescribed his required medications to get Allen through tomorrow morning. Allen also called Indian health services and requested they provide him with his needed medications, since his family has not provided him with them. Transport went without incident.

Smith

[Signature]



Nez Perce County Sheriff's Office

1221 F Street • P.O. Box 896 • Lewiston, Idaho 83501

Jim Dorion
Sheriff

Dale Burrey
Chief Deputy

Administration
(208) 799-3130

Dispatch
(208) 799-3131

Jail
(208) 799-3132

Records
(208) 799-3137

Warrants
(208) 799-3139

Civil
(208) 799-3135

Driver's License
(208) 799-3138

Sheriff's FAX
(208) 799-3101

Jail FAX
(208) 799-3144

FAXOGRAM

DATE: 8/26/08 TOTAL PAGES (incl. this page): 3

TO: Judge Casskill

AGENCY: _____

FAX NUMBER: 799-3192

FROM: Deputy Clark

FAX NUMBER: 799-3144 TELEPHONE NUMBER: 799-3132

COMMENTS: Mark Allen was brought in on a FTA Warrant
& BW for Felony Arraignment this weekend. He was
taken to the ER for extremely High Blood Pressure +
Diabetes (See Report) Also included is a list of
Meds we need to get for him if he stays after his
Arraignment today. @ I leave this in your very capable
Hands.
Pat

CONFIDENTIALITY NOTICE

The documents accompanying this facsimile transmission contain confidential information belonging to the sender which is legally privileged. The information is intended for the use of the individual or entity named above. If you are not the intended recipient, please immediately notify us by telephone to arrange for return of the original documents. Thank you.



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State v. Mark E Allen II JUDGE Kalbfleisch
HEARING TYPE Initial Arraignment CLERK Nagel
PLF ATTORNEY _____ TAPE # T5566
DEF ATTORNEY _____ CASE # CR08-3704
OTHERS PRESENT _____ DATE 8-25-08
TIME 1:15 PM 9am

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

220 Def present with/without counsel

✓ Court advises Def of rights and charges

✓ Court sets Preliminary Hearing for 9/3/08 at 1:30 PM

✓ Def requests court appointed counsel and signs Affidavit

Court Appoints F&W to represent Def

Bond: \$5,000, OR'd

607 Recess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

THE STATE OF IDAHO,

Plaintiff,

v.

Allen, Mark III

Defendant.

No. CR08-03704

NOTIFICATION OF RIGHTS -
FELONY

PAUL J. WEEKS
CLERK OF THE DIST. COURT
W. J. Weeks
DEPUTY

The purpose of this initial appearance is to advise you of your rights and the charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Nez Perce County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

Acknowledgment of Rights.

I have read this entire document, and I understand these rights as set forth above.

Date 8-25-08 Defendant's Signature

Mark E. Allen III

Notification of Rights - Felony

FILED
2008 AUG 25 AM 10:06
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF THE DIST. COURT

DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Mark E Allen III

Defendant,

CASE NO. C208-3704

- () NOTICE OF PRELIMINARY
CONFERENCE
(X) NOTICE OF PRELIMINARY
HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, __.m., on the _____ day of _____, 20____.
- (X) PRELIMINARY HEARING to begin at 130 p.m., on the 3rd day of September, 2008.
- () SENTENCING to begin at _____, __.m. on the _____ day of _____, 20____.
- () HEARING to begin at _____, __.m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 25 day of Aug, 2008.

BY ORDER OF:

(✓) Copy to Prosecuting Attorney

(✓) Copy handed to Defendant

() Copy mailed to Defendant

(✓) Copy mailed/handed/placed in basket to Defendant's Attorney

Macomber, KarbFleish
Judge

Nagle
Clerk

Send Judicial District Court, State of Id^{aho}
an and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2008 AUG 26 AM 7 39

STATE OF IDAHO
Plaintiff,

vs.

Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED] ID

Citation No:

Case No: CR-2008-0003704

ORDER APPOINTING PUBLIC DEFENDER

The Court being fully advised as to the application of Mark Edward Allen III, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

F & V
504 Main Street, Suite 480
Lewiston, ID 83501
(208) 743-6100

Public Defender for the County of Nez Perce, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Mark Edward Allen III, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 8-25-08

Judge

Copies to:

☒ Public Defender
☒ Prosecutor

Deputy Clerk

Order Appointing Public Defender

DOC30 10/88

William J. Fitzgerald, ISBN No. 1974
Robert J. Van Idour, ISBN No. 2644
Joanna M. McFarland, ISBN No. 7112
FITZGERALD & VAN IDOUR
ATTORNEYS AT LAW
Towne Square, Suite 480
504 Main Street
Lewiston, Idaho 83501
Telephone: (208) 746-4090
Facsimile: (208) 746-5571

FILED
2008 AUG 28 PM 4 34
DEPUTY CLERK OF THE DIST. COURT
Amelia Chene
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	CASE NO. CR08-03704
)	
Plaintiff,)	
vs.	)	REQUEST FOR DISCOVERY
)	
MARK E. ALLEN, III,)	
)	
Defendant.)	

TO: THE PROSECUTING ATTORNEY, LEWISTON, NEZ PERCE COUNTY, STATE
OF IDAHO:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho
Criminal Rules, requests discovery and inspection of the following information,
evidence, and materials:

ONE: Disclose to defense any and all material or information within your
possession or control or which may hereafter come into your possession or control
which tends to negate the guilt of the accused as to the offense charged or which would
tend to reduce the punishment therefore,

TWO: Permission to the defendant to inspect and copy or photograph any
relevant, written, or recorded statements made by the defendant or copies thereof
within the possession, custody or control of the state.

THREE: The substance of any relevant, oral statement made by the defendant

REQUEST FOR DISCOVERY

1

or copies thereof within the possession, custody or control of the state.

FOUR: Permission of the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant and the substance of any relevant, oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

FIVE: Furnish to the defendant a copy of the prior criminal record of the defendant, if any.

SIX: Permission of the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant.

SEVEN: Permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case or copies thereof within the possession, custody, or control of the prosecuting attorney.

EIGHT: Furnish to the defendant written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney.

NINE: Furnish to the defendant statements made by the prosecution's witnesses or prosecuting attorney or agents or to any official involved in the investigatory process of the case.

TEN: Furnish to the defendant reports and memoranda made by any police officer or investigator in connection with the investigation or prosecution of the case.

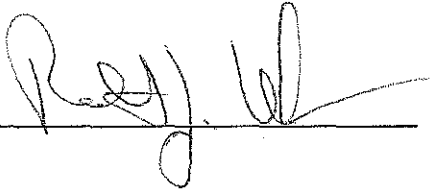
ELEVEN: Defendant hereby requests pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and I.C.R. 16(a) that the State disclose to the defense any and all exculpatory material and/or exculpatory information in this case. Defendant specifically objects to and rejects any requirement or request that Defendant notify the State, in

writing or otherwise, of the defenses that he or she is or may be asserting in this case as a condition of disclosure of such exculpatory information and/or exculpatory material to the defense. Any such precondition for disclosure of exculpatory material and/or exculpatory information violates the 4th, 5th and 6th Amendments to the United States Constitution, the ruling in Brady v. Maryland, 373 U.S. 83 (1963), I.C.R. 16(a) and (c), attorney -client privilege and the work product doctrine. By this demand for disclosure the Defendant demands production of all material and information which the State does not disclose and Defendant demands notification of the State's determination to withhold material and information from Defendant so that Defendant can file a timely motion to compel the disclosure and production of the withheld material and/or information. Without waiving any objection to the State's request that Defendant notify the State of Defendant's planned defense(s) the State is further notified that a defense in this and every case in which this Request for Discovery is made includes, but is not limited to, the defense that material and/or information withheld by the State was and is exculpatory and if disclosed to Defendant would have resulted in Defendant's acquittal or dismissal of all charges.

The undersigned further requests permission to inspect and copy said information, evidence and materials not required to be furnished within fourteen (14) days from receipt of this notice, or at such other time as counsel may agree.

DATED this 26th day of August, 2008.

FITZGERALD & VAN IDOUR
Attorneys for Defendant

By 

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 26th day of August, 2008, I caused a true and correct copy of the foregoing instrument to be delivered to the Nez Perce County Prosecuting Attorney, Lewiston, Idaho 83501.

FITZGERALD & VAN IDOUR
Attorneys for Defendant

By Lonna R Dorchak

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 6594

2008 AUG 27 PM 4 20

JUSTICE
CLERK OF THE DIST. COURT
W. J. Dammann
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

Defendant.

CASE NO. CR2008-0003704

REQUEST FOR DISCOVERY

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence and materials:

1. Books, papers, documents, photographs, tangible objects or portions thereof, which are within the possession, custody, or control of the defendant, and which the defendant intends to introduce in evidence at trial;

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the

defendant intends to call at the trial, when the results or reports relate to testimony of the witness;

3. A list of names and addresses of witnesses the defendant intends to call at trial.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

The undersigned further requests permission to inspect and copy said information, within 14 days from the date of this request at the Prosecuting Attorney's Office, Lewiston, Idaho.

REQUEST FOR NOTICE OF DEFENSE OF ALIBI

Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney requests that you serve upon his office within ten days of your receipts of this request a written notice of the intention of your client to offer a defense of alibi in the above-referenced matter.

Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 27th day of August 2008.



NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

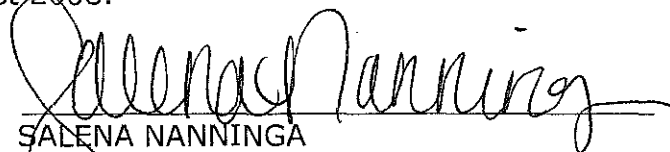
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing REQUEST FOR DISCOVERY was

- (1) X hand delivered, or
- (2) hand delivered via court basket, or
- (3) sent via facsimile, or
- (4) mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

William J. Fitzgerald
FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston Idaho 83501

DATED this 27th day of August 2008.



SALENA NANNINGA
Legal Assistant

2008 AUG 27 PM 4 20

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 6594

CLERK OF THE DIST. COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

Defendant.

CASE NO. CR2008-0003704

RESPONSE TO REQUEST FOR
DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

COMES NOW, the State in the above-entitled matter, and submits the following
Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or
copies thereof, within the possession, custody or control of the State, the existence of
which is known or is available to the prosecuting attorney by the exercise of due
diligence; and also the substance of any relevant, oral statement made by the
defendant whether before or after arrest to a peace officer, prosecuting attorney, or
the prosecuting attorney's agent have been disclosed, made available, or are attached
hereto as set forth in Exhibit "B."

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "B."

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial is set forth in Exhibit "A." Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting

attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

7. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

8. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are attached hereto as set forth in Exhibit "B." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

9. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "B," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the defendant. Furthermore, any items which are listed in Exhibit "B" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "B," are available for inspection upon appointment with the Prosecuting Attorney's Office.

10. The State reserves the right to supplement any and all sections of this response if and when more information becomes available.

11. The State objects to requests by the defendant for anything not addressed above on the grounds that such requests are outside the scope AND/OR are irrelevant under I.C.R. 16.

DATED this 27th day of August 2008.



NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was

- (1) X hand delivered, or
- (2) hand delivered via court basket, or
- (3) sent via facsimile, or
- (4) mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

FITZGERALD & VAN IDOUR
504 Main Street, Suite 480
Lewiston, ID 83501

DATED this 27th day of August 2008.

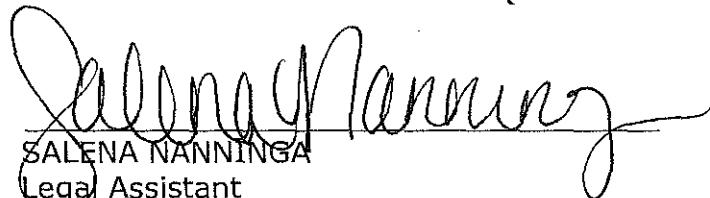

SALENA NANNINGA
Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. MARK E. ALLEN III
NEZ PERCE COUNTY CASE NO. CR2008-0003704

1. NAME: BRETT J. DAMMON
ADDRESS: Lewiston Police Department
1224 F Street Lewiston, ID 83501
PHONE: (208) 746-0171
2. NAME: JASON E. DANIELS
ADDRESS: Domebo Flats
P.O. Box 549 Lapwai, ID 83540
PHONE: (208) 843-2217
3. NAME: ERIC KJORNESS
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
4. NAME: JASON LEAVITT
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
5. NAME: KAMI M. PABLO
ADDRESS: 327 Adams Lane, Apt. A Lewiston, ID 83501
PHONE: (208) 743-8334

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. MARK E. ALLEN III
NEZ PERCE COUNTY CASE NO. CR2008-0003704

1. Copies of two (2) DVD+R's are being provided with this Response to Request for Discovery dated August 27, 2008.
2. Lewiston Police Department Cap Sheet and Case Disposition Sheet, pages 1-2.
3. Lewiston Police Department Law Incident Table, pages 3-4.
4. Lewiston Police Department Narrative Report prepared by Jason Leavitt, pages 5-7.
5. Notice of Suspension, pages 8-9.
6. Lewiston Police Department Alcohol/Drug Influence Report, page 10.
7. Constitutional Rights Warning, page 11.
8. Driving Record, pages 12-13.
9. Lewiston Police Department Main Names Table, pages 14-17.
10. Criminal history, pages 18-40.
11. Certified Prior under CR-98-71, pages 41-47.

William J. Fitzgerald, ISBN 1974
Robert J. Van Idour, ISBN 2644
Joanna M. McFarland, ISBN 7112
Fitzgerald & Van Idour
Attorneys at Law
Towne Square, Suite 480
504 Main Street
Lewiston, Idaho 83501
Telephone: (208) 743-6100

FILED
2008 AUG 29 PM 12 08

PATRICIA REEKS
CLERK OF THE DIST. COURT
Patricia Reeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,	)	CASE NO. CR08-03704
)	
Plaintiff,)	
)	
v.	)	DISCOVERY COMPLIANCE
)	
MARK E. ALLEN III,)	
)	
Defendant.)	

The defense responds to the State's Request for Discovery as follows:

1. No books, papers, documents, photographs, tangible objects etc., are in the Defendant's possession that Defendant currently intends to produce at trial.
2. No scientific tests or examinations have been performed by the defense or at its request.
3. In addition to the witnesses whose names and addresses were provided to the defense in the State's Response to Discovery, the Defendant reserves the right to testify on Defendant's own behalf.
4. There are no additional witnesses at this time. If and when we do receive a list of additional witnesses, an amended discovery will be made.

Dated this 29th day of August, 2008.

FITZGERALD & VAN IDOUR
Attorneys for the Defendant

By: [Signature]

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 29th day of August, 2008,
I caused a true and correct copy of this document to be delivered to the Nez Perce County
Prosecuting Attorney, Lewiston, ID 83501

FITZGERALD & VAN IDOUR

By Lorna R. Dorchak

FILED

2008 DEC 4 PM 2:52
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
PATRICIA WEEKS
CLERK OF THE DIST. COURT

STATE OF IDAHO, _____ DEPUTY
Plaintiff,)
CASE NO. CR08-3704
() NOTICE OF PRELIMINARY
() CONFERENCE
(☒) NOTICE OF PRELIMINARY
() HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON
vs. _____
Mark E Allen III
Defendant,)

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, __.m., on the _____ day of _____, 20____.
- (☒) PRELIMINARY HEARING to begin at 1:30, p.m., on the 16 day of December, 2008.
- () SENTENCING to begin at _____, __.m. on the _____ day of _____, 20____.
- () HEARING to begin at _____, __.m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 4 day of Dec, 2008.

BY ORDER OF:

(☒) Copy to Prosecuting Attorney

(☒) Copy handed to Defendant

() Copy mailed to Defendant

() Copy mailed/handed/placed in basket to Defendant's Attorney

Kalbfleisch
Judge

Nagle
Clerk

FW

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO,

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

FILED

2008 DEC 4 AM 8 17

PATTY O. WEEKS

CLERK OF THE DIST. COURT

DEPUTY

Case No: CR-2008-0003704

NOTICE OF HEARING

RESET

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial - County P. D.
Judge:

Tuesday, December 09, 2008
Greg K. Kalbfleisch

09:00 AM

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Thursday, December 04, 2008.

Defendant: Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Mailed _____ Hand Delivered XX

Private Counsel: F & V
111 Main St Ste 301
Lewiston, ID 83501

Mailed _____ Hand Delivered XX

Prosecutor: Nancy Berger-Schneider

Mailed _____ Hand Delivered XX

Dated: Thursday, December 04, 2008

Patty O. Weeks
Clerk Of The District Court

By:

Thurmond
Deputy Clerk
DOC22 7/96

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO
Plaintiff,

vs.

Mark Edward Allen III
106 Phinney
PO Box 507
Lapwai, ID 83540

Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED]

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

Case No: CR-2008-0003704

BENCH WARRANT

TO ANY SWORN PEACE OFFICER IN THE STATE OF IDAHO:

The Defendant in the above captioned case, having failed to appear for the following court hearing:

preliminary hearing, 9/24/08 at 1:30 p.m.

Judge: Kent J. Merica

Courtroom: Nez Perce County Courthouse

Said Defendant having been released upon his/her own recognizance;

NOW, THEREFORE, THIS IS TO COMMAND YOU to forthwith arrest the above named Defendant and bring him/her before this Court.

Dated: 9/25/2008

Judge: 

May be served: ☐ Day Only
☒ Day or Night

Bond Amount: \$5000.00

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the above named Defendant on this 3RD day of DECEMBER 2008

Officer: D. Blum

Agency: LPD

Bench Warrant

DOC23 7/88

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State of Idaho vs. Mark Edward Allen III JUDGE Kent J. Merica
HEARING TYPE PRELIMINARY HEARING CLERK Nelson
PLF ATTORNEY Nancy Berger-Schneider TAPE NO. F-1734
DEF ATTORNEY F & V CASE NO. CR-2008-0003704
OTHERS PRESENT _____ DATE 9/24/2008
TIME 01:30 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

199 Def present with / without counsel Δ FTA 2:02 pm
S-Schneider present for State

State / Def requests continuance of Preliminary Hearing

Court Orders: Preliminary Hearing continued to : _____ at 1:30 p. m.

Def waives Preliminary Hearing -- Court Binds Def over to District Court

Case set for District Court Arraignment _____ at _____ Assigned to: _____

Preliminary Hearing held, Proceedings as follows:

F&V - no contact w/ Δ. mailed notice - has not been returned.

SCW Bond 5,000.

234

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

Mark Allen,
Defendant,

CASE NO. CR08-3704

- () NOTICE OF PRELIMINARY
CONFERENCE
(✓) NOTICE OF PRELIMINARY
HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing
has been set in your case at which you are to appear in the Courtroom of the Nez Perce County
Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, __.m., on the
_____ day of _____, 20____.
- (✓) PRELIMINARY HEARING to begin at 1:30 p.m., on the
24th day of September, 2008.
- () SENTENCING to begin at _____, __.m. on the _____ day of
_____, 20____.
- () HEARING to begin at _____, __.m. on the _____ day of
_____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID
TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A
WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 17th day of September, 2008.

BY ORDER OF:

(✓) Copy to Prosecuting Attorney

(✓) Copy handed to Defendant to FW

() Copy mailed to Defendant

(✓) Copy mailed/handed/placed in
basket to Defendant's Attorney
FW

Kalbfeisch
Judge

Nagje
Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State of Idaho vs. Mark Edward Allen III JUDGE Greg K. Kalbfleisch
HEARING TYPE PRELIMINARY HEARING CLERK Nagle
PLF ATTORNEY Nancy Berger-Schneider TAPE NO. F- 1733
DEF ATTORNEY F & V - Van Idour CASE NO. CR-2008-0003704
OTHERS PRESENT _____ DATE 9/17/2008
TIME 01:30 PM

1627 BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def ^{NOT} present with / without counsel
Berger-Schneider present for State

State / Def requests continuance of Preliminary Hearing

Court Orders: Preliminary Hearing continued to : 9/24/08 at 1:30 p.m.

Def waives Preliminary Hearing – Court Binds Def over to District Court

Case set for District Court Arraignment at Assigned to:

Preliminary Hearing held. Proceedings as follows:

Complications from son's broken arm, had to go to doctor.
Previously waived speedy prelim.

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

VS.

Mark Allen III
Defendant,

CASE NO. CR 08-3704

- () NOTICE OF PRELIMINARY
CONFERENCE
(✓) NOTICE OF PRELIMINARY
HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, .m., on the _____ day of _____, 20____.
- (✓) PRELIMINARY HEARING to begin at 1:30 p.m., on the 17th day of September, 2008.
- () SENTENCING to begin at _____, .m. on the _____ day of _____, 20____.
- () HEARING to begin at _____, .m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 3^d day of Sept, 2008

BY ORDER OF:

- (✓) Copy to Prosecuting Attorney
(✓) Copy handed to Defendant
() Copy mailed to Defendant
(✓) Copy mailed/handed/placed in
basket to Defendant's Attorney

Gashill
Judge
Nm
Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State of Idaho vs. Mark Edward Allen III JUDGE Jay P. Gaskill
HEARING TYPE PRELIMINARY HEARING CLERK Evans *Melvin*
PLF ATTORNEY Nancy Berger-Schneider TAPE NO. F- 1727
DEF ATTORNEY F & V CASE NO. CR-2008-0003704
OTHERS PRESENT _____ DATE 9/3/2008
TIME 01:30 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

895 Def present with / without counsel

S-Schneider present for State

State / Def requests continuance of Preliminary Hearing

Court Orders: Preliminary Hearing continued to : 9-17-08 at 1:30 p. m.

Def waives Preliminary Hearing – Court Binds Def over to District Court

Case set for District Court Arraignment _____ at _____ Assigned to: _____

Preliminary Hearing held, Proceedings as follows:

S waives sp prelim

943

Sun Surety
Insurance Company
PO Box 2373
Rapid City, S.D. 57709

SEND ALL COURT NOTICES TO:
SUN SURETY INSURANCE COMPANY
PO Box 2373, Rapid City, South Dakota 57709
AND
BRANDON LeFAVOUR
521 Karen Avenue, Lewiston, Idaho 83501

FILED
APPEARANCE BOND

SSS-62532

IN Magistrate 2008 DEC 8 AM 7 40
STATE OF Idaho COURT, STATE OF IDAHO
CLERK OF THE DIST. COURT
VS. Mark Allen DEPUTY
COUNTY OF Nez Perce

KNOW ALL MEN BY THESE PRESENTS:

That we, Mark Allen as Principal and SUN SURETY INSURANCE COMPANY,
as surety (Identified by attached Power of Attorney No.): SSS-62532
are held and firmly bound unto the Magistrate Court, Lewiston City, Nez Perce County, Idaho
in the sum of Five Thousand Dollars, for the payment whereof well and truly to be made
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

Signed and sealed this SB day of December, A.D. 20 08

The condition of this obligation is such that if the said Mark Allen principal,
shall appear at the next regular or special term of the Magistrate (Name)
Court Lewiston ID (Location) to be held in and for said County to answer a charge of
Bur Tel. Dist and shall appear from day to day and term to term of
said Court and not depart the same without leave then this obligation is void, otherwise to remain in full force and effect.

Taken before and approved by me:

BY _____

Mark E. Allen (L.S.)
Defendant
Brandon LeFavour (L.S.)
Attorney-In-Fact

THIS BOND NOT VALID UNLESS ACCOMPANIED BY AN INDIVIDUALLY NUMBERED POWER OF ATTORNEY PROPERLY EXECUTED, OR IF MORE THAN ONE (1) POWER OF ATTORNEY IS ATTACHED.

NOTE: THIS IS AN APPEARANCE BOND AND CANNOT BE CONSTRUED AS A GUARANTEE FOR FAILURE TO PROVIDE PAYMENTS, BACK ALIMONY PAYMENTS, FINES OR WAGE CLAIMS, NOR CAN IT BE USED AS A BOND ON APPEAL.

FILED
2008 DEC 10 P 4:44

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

v.

MARK E. ALLEN III,

Defendant.

CASE NO. CR08-03704

ORDER BINDING OVER

The defendant having **WAIVED** the Preliminary Hearing in the above-entitled matter on this 10th day of December, 2008 and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that said defendant be and is hereby bound over to District Court for trial on the charge of: COUNT I: OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. § 18-8004(1)(a) and 18-8005(7), a felony.

DATED this 10th day of December, 2008.

MAGISTRATE

This case has been assigned to:

Carl B. Kerrick, District Judge

ORDER BINDING OVER

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

1 2008 DEC 10 P 3:41

CLERK OF DISTRICT COURT
PATTY O. WEEKS
DEPUTY CLERK

Case No: CR-2008-0003704

NOTICE OF HEARING

STATE OF IDAHO,

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Arraignment
Judge:

Thursday, January 08, 2009 01:15 PM
Carl B. Kerrick

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, December 10, 2008.

Defendant: Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Mailed ☒ Hand Delivered ☐

Private Counsel: F & V
111 Main St Ste 301
Lewiston, ID 83501

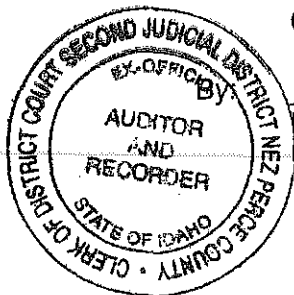
Mailed ☐ Hand Delivered ☒

Prosecutor: Nancy Berger-Schneider

Mailed ☐ Hand Delivered ☒

Dated: Wednesday, December 10, 2008

Patty O. Weeks
Clerk Of The District Court



Deputy Clerk
DOC22-7/96

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State of Idaho vs. Mark Edward Allen III JUDGE Greg K. Kalbfleisch
HEARING TYPE PRELIMINARY HEARING CLERK Naghe
PLF ATTORNEY Nancy Berger-Schneider TAPE NO. F-2
DEF ATTORNEY F & V CASE NO. CR-2008-0003704
OTHERS PRESENT _____ DATE 12/10/2008
TIME 01:30 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present with/ without counsel

Berg

present for State

State / Def requests continuance of Preliminary Hearing

✓ Court Orders: Preliminary Hearing continued to : _____ at 1:30 p.m.

✓ Def waives Preliminary Hearing – Court Binds Def over to District Court

Case set for District Court Arraignment 1/8/09 at 1:15pm Assigned to: Kernick

Preliminary Hearing held, Proceedings as follows:

Has been continued a few other times for medical procedures.

33:26
36:59

1:57:36 Def. decides to waive his prelim hearing.

1:53:32

FILED

2008 DEC 15 PM 4 21

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 6594

PATTY C. WEEKS
CLERK OF THE DIST. COURT
P. C. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

D.O.B.: [REDACTED],

S.S.N.: [REDACTED],

Defendant.

CASE NO. CR2008-0003704

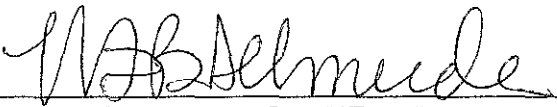
INFORMATION

NANCY F. BERGER-SCHNEIDER Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that MARK E. ALLEN III is accused by this Information of the following crime(s):

COUNT I
OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF
ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, I.C. §
18-8004(1)(a) and 18-8005(7), a felony

That the Defendant, MARK E. ALLEN III, on or about the 4th day of May, 2008 in the County of Nez Perce, State of Idaho, did drive and/or was in actual physical control of a motor vehicle upon a highway, street, bridge and/or any roadway open to the public, while under the influence of alcohol, drugs and/or any other intoxicating substance while having an alcohol concentration of .08 or more, to-wit: .226/.227 as shown by an analysis of his breath.

All of which is contrary to the form, force and effect of the statute in such cases and against the peace and dignity of the State of Idaho.



NANCY F. BERGER-SCHNEIDER
Deputy Prosecuting Attorney

That within fifteen (15) years of said date defendant has previously pled guilty to or been convicted of I.C. § 18-8004(1)(a)(b) and/or (c), OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR AN INTOXICATING SUBSTANCE in violation of Idaho Code § 18-8005(5), to-wit:

STATE OF IDAHO VS MARK E. ALLEN III, IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS, CASE NO. CR1998-0000071, the Defendant having plead guilty and/or was found guilty on July 15, 1999, Judgment of Conviction entered on May 25, 2000, signed by the Honorable George Reinhardt, and filed by the above-named Court on June 1, 2000.

Date: 1/9/2009

Time: 08:31 AM

Page 1 of 1

Second Judicial District Court - Nez Perce County

User: TERESA

Minutes Report

Case: CR-2008-0003704

Defendant: Allen, Mark Edward III

Selected Items

Hearing type:	Arraignment	Minutes date:	01/08/2009
Assigned judge:	Carl B. Kerrick	Start time:	01:32 PM
Court reporter:	Nancy Towler	End time:	01:37 PM
Minutes clerk:	TERESA	Audio tape number:	CRTRM 1
Prosecutor:	Mia Vowels		
Defense attorney:	F & V		

Tape Counter: 13244	Defendant present with counsel.
Tape Counter: 13254	Ms. Vowels addresses the Court and indicates this matter needs to be set for trial. State's Information previously filed for the crime of DUI.
Tape Counter: 13555	Defendant understands the charge and penalties.
Tape Counter: 13612	Defendant's name, date of birth and social security number are correct.
Tape Counter: 13620	Defendant enters plea of not guilty. Jury trial set for 5-4-09 at 9 a.m., pretrial motions along with supporting briefs due 3-12-09, responsive briefs due 3-26-09, pretrial motions to be heard 4-16-09 at 2:30 p.m. if no motions are filed there will not be a hearing and final pretrial conference set for 4-23-09 at 3:30 p.m.
Tape Counter: 13734	Court recess.

CEB

FILED
2009 JAN 9 AM 9 05

THOMAS ALEXS
CLERK OF THE DIST. COURT
Thomas A. Alexs
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN, III,

Defendant.

)
)
) CASE NO. CR08-03704
)
)
) ORDER SETTING JURY TRIAL
) AND SCHEDULING PROCEEDINGS
)
)
)
)
)

The above-entitled case is hereby scheduled as follows:

JURY Trial shall commence on May 4, 2009 at the hour of 9:00 a.m.;

All pre-trial motions shall be filed on or before March 12, 2009;

Supporting Briefs due: March 12, 2009;

Responding Briefs due: March 26, 2009;

All pre-trial motions shall be heard at the hour of 2:30 p.m. on Thursday, April 16, 2009, with the defendant personally present at said hearing. If no motions are filed, there will be no hearing on this date.

Final pre-trial conference and the date and time by which plea bargaining must be completed April 23, 2009, at 3:30 p.m.

Dated this 9th day of January, 2009.


CARL B. KERRICK-District Judge

CERTIFICATE OF MAILING

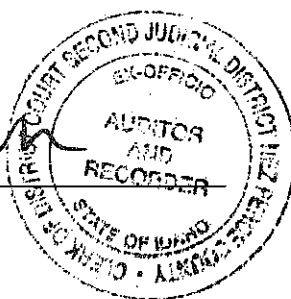
I hereby certify that a true copy of the foregoing ORDER SETTING JURY TRIAL AND SCHEDULING PROCEEDINGS was mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 9th day of January, 2009, to:

Robert Van Idour *-messenger*
111 Main Street Ste 301
Lewiston, ID 83501

Nancy Berger-Schneider *-messenger*
P.O. Box 1267
Lewiston, ID 83501

PATTY O. WEEKS, Clerk

By 
Deputy



ORDER SETTING JURY TRIAL
AND SCHEDULING PROCEEDINGS

RESET (Clerk, check if applicable)

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to: _____

Assigned: _____

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

2009 MAY 14 AM 11:30

Case No: CR-2008-0003704

STATE OF IDAHO

Plaintiff,

vs.

Mark Edward Allen III

PO Box 507

Lapwai, ID 83540

Defendant.

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

CHARGE(s):

CR-2008-0003704 Driving Under The Influence

REQUIRED ROA CODES: (Enter the appropriate code)

PSIO1- Order for Presentence Investigation Report (only)

PSMH1- Order for Presentence Investigation Report and
Mental Health Assessment

PSSA1- Order for Presentence Investigation Report and
Substance Abuse Assessment

On this Thursday, May 14, 2009, a Pre-sentence Investigation Report was ordered by the Honorable Carl B. Kerrick to be completed by 7-9-09 for Court appearance on Monday, July 16 2009 at: 02:30 PM at the above stated courthouse.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under IC 19-2524 assessment(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):

- ☐ Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSMH1 ROA code); and/or
- ☐ Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSSA1 ROA code)

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator: _____

☒ No evaluations are ordered. (PSIO1 ROA code)

DEFENSE COUNSEL: F & V

PROSECUTOR: Nancy Berger-Schneider

THE DEFENDANT IS IN CUSTODY: ☐ YES ☒ NO If yes where: _____

PLEA AGREEMENT: State recommendation

WHJ/JOC ☐ Probation ☐ PD Reimb ☐ Fine ☐ ACJ ☐ Restitution ☐ Retained Jurisdiction

☐ Other: _____

Date: 5-14-09

Signature: _____

Judge

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ NO ☐ YES

Name: _____ ☐ Male ☐ Female ☐ RACE: Caucasian ☐ Hispanic ☐ Other

Address: _____ City: _____ State: _____ ZIP: _____

Telephone: _____ Message Phone: _____ Work Phone: _____

Employer: _____ Work Address: _____

Date of Birth: _____ Social Security Number: _____

Name & Phone Number of nearest relative: _____

Date of Arrest: _____ Arresting Agency: _____

Your assigned Pre-sentence Investigator will contact you to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

Date: 4/23/2009

Second Judicial District Court - Nez Perce County

User: TERESA

Time: 04:54 PM

Minutes Report

Page 1 of 1

Case: CR-2008-0003704

Defendant: Allen, Mark Edward III

Selected Items

Hearing type:	Final Pretrial	Minutes date:	04/23/2009
Assigned judge:	Carl B. Kerrick	Start time:	03:39 PM
Court reporter:	Nancy Towler	End time:	03:40 PM
Minutes clerk:	TERESA	Audio tape number:	CRTRM 1
Prosecutor:	Mia Vowels		
Defense attorney:	F & V		

Tape Counter: 33903	Defendant present with counsel.
Tape Counter: 3391	Mr. Van Idour indicates this matter has not been resolved.
Tape Counter: 33950	Court sets final pretrial conference in chambers for 4-30-09 at 4 p.m. Defendant does not need to be present but needs to be available by phone.
Tape Counter: 34041	Court recess.

Date: 5/7/2009
Time: 12:02 PM
Page 1 of 1

Second Judicial District Court - Nez Perce County

User: TERESA

Minutes Report

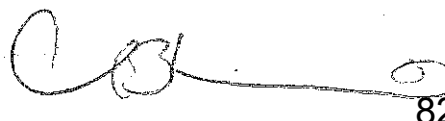
Case: CR-2008-0003704

Defendant: Allen, Mark Edward III

Selected Items

Hearing type:	Change of Plea	Minutes date:	05/07/2009
Assigned judge:	Carl B. Kerrick	Start time:	11:02 AM
Court reporter:	Linda Carlton	End time:	11:04 AM
Minutes clerk:	TERESA	Audio tape number:	CRTRM 1
Prosecutor:	Nancy Berger-Schneider		
Defense attorney:	F & V		

Tape Counter: 110218	Defendant not present.
Tape Counter: 110230	Mr. Van Idour addresses the Court and Defendant called his office this morning at 8:20 a.m. has a broken tooth. Mr. Van Idour does not have documentation at this time but will provide it when he receives it.
Tape Counter: 110316	Court resets change of plea for 5-14-09 at 11 a.m.



Date: 5/15/2009

Second Judicial District Court - Nez Perce County

User: TERESA

Time: 07:48 AM

Minutes Report

Page 1 of 1

Case: CR-2008-0003704

Defendant: Allen, Mark Edward III

Selected Items

Hearing type:	Change of Plea	Minutes date:	05/14/2009
Assigned judge:	Carl B. Kerrick	Start time:	11:05 AM
Court reporter:	Nancy Towler	End time:	11:27 AM
Minutes clerk:	TERESA	Audio tape number:	CRTRM 1
Prosecutor:	Nancy Berger-Schneider		
Defense attorney:	F & V		

Tape Counter: 110520	Defendant present with counsel. State's Information previously filed for the crime of DUI.
Tape Counter: 110637	Mr. Van Idour addresses the Court and each party is free to argue their own sentencing recommendation.
Tape Counter: 110735	Court advises Defendant of his rights.
Tape Counter: 111056	Defendant understands his rights.
Tape Counter: 111221	Defendant waives reading of the Information.
Tape Counter: 111245	Defendant enters plea of guilty.
Tape Counter: 111313	Defendant acknowledges prior conviction.
Tape Counter: 111353	Court addresses Defendant. Defendant responds.
Tape Counter: 111441	Mr. Van Idour stipulates to factual basis.
Tape Counter: 111500	Court addresses Mr. Van Idour. Mr. Van Idour responds.
Tape Counter: 111538	Court addresses Defendant. Defendant responds.
Tape Counter: 112209	Defendant again enters plea of guilty.
Tape Counter: 112222	Defendant again acknowledges prior conviction.
Tape Counter: 112226	Court finds that the Defendant understands the nature of the charges, the consequences of the guilty plea; there is a factual basis for the plea of guilty, the guilty plea was freely and voluntarily made; and that the Defendant freely and voluntarily waived these rights. Court accepts guilty plea.
Tape Counter: 112312	Defendant has reviewed and signed notification of subsequent penalties.
Tape Counter: 112353	Court sets sentencing for 7-16-09 at 2:30 p.m. PSI due 7-9-09.
Tape Counter: 112557	Ms. Berger-Schneider will be sending over motion and order to dismiss CR08-3551.
Tape Counter: 112710	Court recess.

CBL 83

FILED
2009 MAY 15 AM 10 00

PAUL J. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

SECOND JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF NEZ PERCE
1230 MAIN ST.
LEWISTON, IDAHO 83501

STATE OF IDAHO

Plaintiff,

vs.

Mark Edward Allen III

PO Box 507

Lapwai, ID 83540

Defendant.

DOB: [REDACTED]

DL: [REDACTED] ID

Case No: CR-2008-0003704

**NOTIFICATION OF PENALTIES
FOR VIOLATION OF
DRIVING UNDER THE
INFLUENCE**

YOU ARE HEREBY NOTIFIED that if you plead guilty to or are found guilty of driving under the influence in the future, the penalties will be as follows:

A SECOND DUI VIOLATION within ten (10) years, including withheld judgments, is a **MISDEMEANOR** and you:

1. Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days, the first forty-eight (48) hours of which must be consecutive, and five days of which must be served in jail, and may be sentenced to not more than one (1) year; and
2. May be fined up to Two Thousand Dollars (\$2,000.00); and
3. Shall surrender your driver's license to the court; and
4. Shall have your driving privileges suspended for a minimum one (1) year during which absolutely no driving privileges of any kind may be granted; and
5. Shall drive only a motor vehicle equipped with a functioning ignition interlock system, following the (1) year license suspension period.

TWO DUI VIOLATIONS when both violations involve an alcohol concentration of 0.20 or above, within five (5) years; **A THIRD DUI VIOLATION** within ten (10) years; or a **SUBSEQUENT DUI VIOLATION** with a previous felony DUI or aggravated DUI within fifteen (15) years; including withheld judgments, is a **FELONY** and you:

1. (a): Shall be sentenced to the State Board of Corrections for not more than five (5) years for **TWO DUI VIOLATIONS** involving an alcohol concentration of 0.20 or above. But

if the Court imposes a jail sentence instead of the state penitentiary, it shall be for a minimum period of not less than thirty (30) days: or

(b): Shall be sentenced to the State Board of Corrections for not more than ten (10) years for a **THIRD DUI VIOLATION** within ten (10) years or a **SUBSEQUENT DUI VIOLATION** with a previous felony DUI or aggravated DUI within fifteen (15) years. But if the Court imposes a jail sentence instead of the state penitentiary, it shall be for a minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served in jail: and

2. May be fined up to Five Thousand Dollars (\$5,000.00); and
3. Shall surrender your driver's license to the court; and
4. Shall have your driving privileges suspended for at least one (1) year and not more than five (5) years following your release from imprisonment during which time you shall have absolutely no driving privileges; and
5. Shall drive only a motor vehicle equipped with a functioning ignition interlock system, following the (1) year license suspension period.

Upon application to the Court by the defendant and proof of valid liability insurance or other proof of financial responsibility (as provided in chapter 12, title 49 Idaho Code), the Court may authorize a restricted driving permit. The acceptable terms for driving will be set by the court. No driving outside the scope of the authorized stated use will be acceptable. **In no event shall a person who is disqualified or whose driving privileges are suspended, revoked or canceled be granted restricted driving privileges to operate a commercial motor vehicle.**

I HAVE READ THIS ENTIRE DOCUMENT; I HAVE HAD IT EXPLAINED TO ME;
AND I HAVE RECEIVED A COPY.

Dated: 5-14-09

Mark E. Helmer
Defendant

SECOND JUDICIAL DISTRICT COURT, STATE OF IDAHO
LAND FOR THE COUNTY OF NEZ PERCE
1230 MAIN ST.
LEWISTON, IDAHO 83501

FILED

STATE OF IDAHO

2009 AUG 10 PM 4 38

DATED: Monday, August 10, 2009

vs
Mark Edward Allen III

PATTY O. WEEKS
CLERK OF THE DIST. COURT

CASE NO: CR-2008-0003704

Patty O. Weeks
DEPUTY

Nez Perce County Sheriff's Office

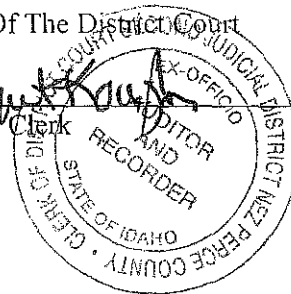
WARRANT RECALL

YOU ARE HEREBY NOTIFIED that a bench warrant issued on Friday, July 17, 2009, against **Mark Edward Allen III** is being recalled. Please return warrant immediately to this office.

Dated: August 10th, 2009
Patty O. Weeks
Clerk Of The District Court

By: *[Signature]*

Deputy Clerk



Second Judicial District Court, State of Idaho
in and For the County of Nez Perce
1230 Main St.

Lewiston, Idaho 83501

STATE OF IDAHO

FILED

Plaintiff, 2009 JUL 23 PM 2 49

vs.

Mark Edward Allen III
Defendant.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

Case No: CR-2008-0003704

NOTICE OF FORFEITURE OF
SURETY BOND

BOND POWER NO: SS-5-62532

BOND AMOUNT: \$5000.00

AAAA Ace BailBonds
Brandon A LeFavour
521 Karin Ave.
Lewiston ID 83501

Sun Surety Insurance Co
P O Box 2373
Rapid City SD 57709

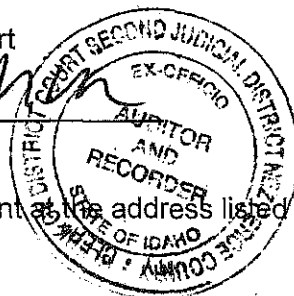
YOU ARE HEREBY NOTIFIED that the bail for the above named Defendant for which you are obligor, was declared forfeited by order of this Court pursuant to Idaho Code 19-2927, on Thursday, July 23, 2009.

If within one hundred eighty (180) consecutive days from the above date of the order forfeiting bond, you bring said Defendant to the jail facility of the county which issued the warrant, the Court shall direct that the forfeiture be discharged.

Dated: Thursday, July 23, 2009

Patty O. Weeks
Clerk Of The District Court

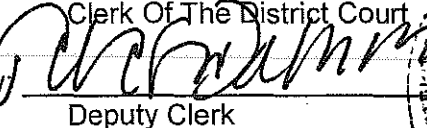
By: 
Deputy Clerk

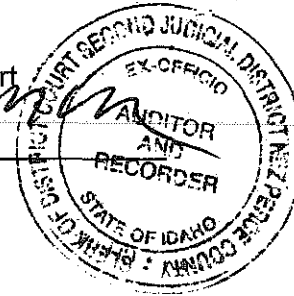


I certify a copy of this Notice was mailed, postage paid, to the above named bail agent at the address listed above.

Dated: Thursday, July 23, 2009

Patty O. Weeks
Clerk Of The District Court

By: 
Deputy Clerk



12-10-09
130pm
PTLLSTATE OF IDAHO,
Plaintiff,ORDER OF BOND FORFEITURE
OR RELEASE

FILED

Case

C208-3704

vs.

Mark Allen

Defendant,

2009 JUL 23 PM 2 46

AMT. POSTED \$

OFFENSE

DUI

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

Cost

\$

POSTEE:

AAAA Ace Bail Bonds
Brandon L FAVOUR

Vict. Fund

\$

C. J. Fund

\$

Defendant

X

Surety

BOND AMOUNT \$

5000.00

C. I. Fund

\$

ADDRESS

Dst. Crt. Fund

\$

TOTAL REFUND \$

X IT IS HEREBY ORDERED that the bond is forfeited to the Court and Notice is hereby sent to the following on the 23rd day of July, 2009AAAA Ace Bail Bonds
Brandon L FAVOUR
521 Karin Ave
Lewiston ID 83501

San Surety Ins. Co.

PO Box 2373

Rapid City SD 57709

IT IS HEREBY ORDERED that the bond be returned.

IT IS HEREBY ORDERED that the Bond be applied to fines, costs, and to any other funds as ordered by the Court, and any sums remaining be disbursed to the Postee.

DATED this

23^d

day of

July

2009

Judge

Check #

Drawn by

Received by

Mailed to

COURT MINUTES

Judge: Carl B. Kerrick

Courtroom 1

CR08-03704

State of Idaho vs. Mark Edward Allen III

Hearing type: Sentencing

Hearing date: 7/16/2009 Time: 3:17 pm

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Defense Attorney: F & V

Prosecutor: Nancy Berger-Schneider

- 31748 Defendant not present.
- 31759 Ms. Berger-Schneider addresses the Court and PSI was not prepared.
- 31838 Court addresses the parties re: letter from Probation and Parole. Defendant failed to provide contact information after court and did not schedule interview.
- 31852 Mr. Van Idour addresses the Court and has not had any contact with his client.
- 31916 Court issues bench warrant with \$15,000.00 bond.
- 31928 Court recess.



IDAHO DEPARTMENT OF CORRECTION

*"Protecting Idaho through Safety, Accountability, Partnerships,
and Opportunities for Offender Change"*

C. L. "BUTCH" OTTER
Governor

BRENT D. REINKE
Director

July 9, 2009

Honorable Carl B. Kerrick
District Court Judge
County of Nez Perce
PO Box 896
Lewiston, ID 83501

RE: Mark Allen III
CR2008-3704

Dear Judge Kerrick:

On May 14, 2009, a presentence was ordered in reference to the above case with a due date of July 9, 2009.

Mr. Allen did provide contact information after court and he was directed to contact this office no later than May 18, 2009 to schedule an interview. Mr. Allen failed to contact me. On May 21, 2009 an attempt to contact Mr. Allen was made at the number provided. At that time I spoke with Mr. Allen's stepmother who advised that Mr. Allen did not reside at that residence and she provided another contact number. Mr. Allen's stepmother further stated she would relay a message to Mr. Allen should he have contact with him. Messages were left at the number provided by Ms. Allen on May 21 and May 22, 2009. As of the date of this letter I have not heard from Mr. Allen and he has failed to follow through with the presentence investigation process.

If Mr. Allen does make contact with this office or with the Court, I will attempt to have his presentence completed in as timely manner as possible. If you have any questions in regards to this matter, please advise.

Sincerely,

Shawna Hopple
Presentence Investigator
Field & Community Services
District #2

Approved by,

Denise Farmer
Lead Probation Officer

cc: Prosecutor
Defense
File

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,
PLAINTIFF,

VS,

Mark E. Allen,
DEFENDANT,

CASE NO. CR 08-3704

COMMITMENT, HELD TO ANSWER

THE STATE OF IDAHO TO THE SHERIFF OF NEZ PERCE COUNTY, GREETINGS:

An Order having been made this day by me that _____ be held to answer upon

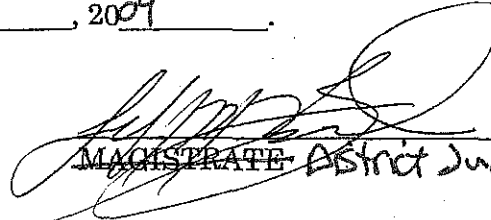
the charge of DUI

Committed in said Nez Perce County on or about the _____ day of _____ 20____.

NOW, YOU, the said sheriff, are commanded to receive the said Defendant into your custody and
detain _____ until legally discharged, and hereby order that the said Defendant be
admitted to bail in the sum of \$_____.

Dated this 10 day of August, 2009.

Release on OR
Quash Warrant


MAGISTRATE District Judge

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO,

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

2009 AUG 10 PM 4 59

Case No: CR-2008-0003704
CLERK OF THE DIST. COURT
NOTICE OF HEARING
DEPUTY

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Sentencing
Judge:

Thursday, August 20, 2009 02:30 PM
Carl B. Kerrick

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Monday, August 10, 2009.

Defendant: Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Mailed _____ Hand Delivered ✓

Private Counsel: F & V
111 Main St Ste 301
Lewiston, ID 83501

Mailed _____ Hand Delivered ✓

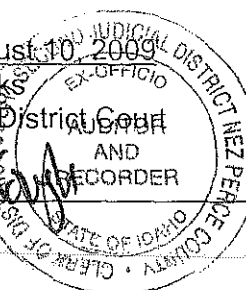
Prosecutor: Nancy Berger-Schneider

Mailed _____ Hand Delivered ✓

Dated: Monday, August 10, 2009
Patty O. Weeks
Clerk Of The District Court

By:

Deputy Clerk
DOC22-7196



Sealed Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

2009 AUG 11 AM 7 22

STATE OF IDAHO
Plaintiff,
vs.

Mark Edward Allen III
106 Phinney
PO Box 507
Lapwai, ID 83540
Defendant.

DOB: [REDACTED]
DL: [REDACTED] ID

PAUL J. GREEN
CLERK OF THE DISTRICT COURT

Asotin DEPUTY
98402

Case No: CR-2008-0003704

BENCH WARRANT

TO ANY SWORN PEACE OFFICER IN THE STATE OF IDAHO:

The Defendant in the above captioned case, having failed to appear for the following court hearing:

Sentencing 7-16-09 at 2:30 p.m.
Judge: Carl B. Kerrick
Courtroom: Nez Perce County Courthouse

Said Defendant having been released upon his/her own recognizance;

NOW, THEREFORE, THIS IS TO COMMAND YOU to forthwith arrest the above named Defendant and bring him/her before this Court.

Dated: 7/17/2009

Judge: [Signature]

May be served: ☐ Day Only
☒ Day or Night

Bond Amount: \$15000.00

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the above named Defendant on this
10 day of August, 2009.

Officer: Dep. B Bonds D71

Agency: Nez Perce County S.O.

RECEIVED
HOUR 11:00 A.M. P.M.

Bench Warrant

JUL 17 2009

DOC23 7/88

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501
BY: [Signature]

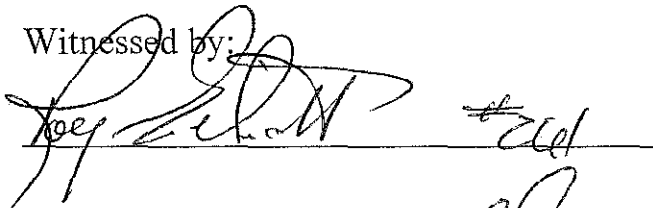
WAIVER OF EXTRADITION ASOTIN COUNTY, WASHINGTON

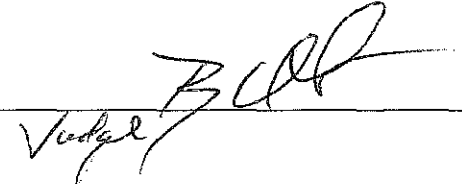
I, Allen, Mark Edward III, do freely and voluntarily state that I am the identical person against whom criminal proceedings, charging me with the commission of a felony have been instituted in the County *Nez Perce*, in the State of *IDAHO*, and I further hereby freely, voluntarily and without promise of reward or leniency, agree, consent and elect to return to the County of *Nez Perce*, State of *IDAHO*, without requisition papers, warrant of rendition or other form of processes, having for their purpose my return to said County and State.

THIS AGREEMENT AND WAIVER is made by me without any reference to my guilt or innocence and shall not be considered in any manner as prejudicing my case and not in any sense an admission of guilt, and I further wholly exonerate and hold blameless in this matter the Sheriff of Asotin County, State of Washington, and all persons active under him, and agree to accompany to the State of *IDAHO*, any peace officer who may be sent to take me to the State for trial.

THIS STATEMENT AND WAIVER, (made in triplicate) done at Asotin County, Washington, this 10th day of August 2009.

Witnessed by:





Judge

Signed


Mark Edward Allen III

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 9/17/2009

Time: 1:50 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

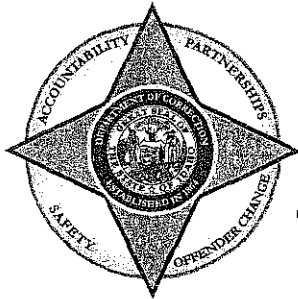
Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: F & V

Prosecutor: Nancy Berger-Schneider

15053 Defendant not present.
15120 Mr. Van Idour addresses the Court.
15133 Court issues bench warrant with \$5,000.00 bond.
15200 Court recess.



RECEIVED SEP 15 2009 TD

IDAHO DEPARTMENT OF CORRECTION

*"Protecting Idaho through Safety, Accountability, Partnerships,
and Opportunities for Offender Change"*

C. L. "BUTCH" OTTER
Governor

BRENT D. REINKE
Director

September 15, 2009

Honorable Carl B. Kerrick
District Court Judge
County of Nez Perce
PO Box 896
Lewiston, ID 83501

RE: Mark Allen III
CR2008-3704

Dear Judge Kerrick:

On May 14, 2009, a presentence was ordered in reference to the above case with a due date of July 9, 2009. Mr. Allen failed to follow through with the presentence investigation process and on August 21, 2009, the Court rescheduled Mr. Allen's sentencing for September 17, 2009 and directed Mr. Allen to contact Idaho Department of Correction to schedule a presentence interview. As of the date of this letter I have not heard from Mr. Allen and he has failed to follow through with the presentence investigation process.

Should Mr. Allen does make contact with this office or with the Court, I will attempt to have his presentence completed in as timely manner as possible. If you have any questions in regards to this matter, please advise.

Sincerely,

Shawna Hopple
Presentence Investigator
Field & Community Services
District #2

Approved by,

Renee Behrens
Section Supervisor

cc: Prosecutor
Defense
File

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Sentencing

Hearing date: 8/20/2009

Time: 3:09 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: F & V

Prosecutor: Nancy Berger-Schneider

30906 Defendant present with counsel.

30937 Court addresses counsel. Court received letter from Probation and Parole indicating PSI has not been completed and the Court issued bench warrant.

31009 Mr. Van Idour addresses the Court re: medical issues.

31155 Court sets status conference for 9-17-09 at 1:15 p.m.

31212 Court addresses Defendant re: PSI process.

31339 Defendant to make contact with Probation and Parole.

31420 Court recess.



AUG. 10. 2009 4:51PM

DISTRICT COURT

NO. 6200 P. 1

SECOND JUDICIAL DISTRICT COURT, STATE OF IDAHO

IN AND FOR THE COUNTY OF NEZ PERCE

1230 MAIN ST.

LEWISTON, IDAHO 83501

FILED

STATE OF IDAHO

vs
Mark Edward Allen III

2009 AUG 10 10:46:31 AM DATED: Monday, August 10, 2009

PATTY O. WEEKS ATTORNEY AT LAW
CLERK OF THE DISTRICT COURT CASE NO. CR-2008-0003704

[Signature]
DEPUTY

DEPUTY

Nez Perce County Sheriff's Office

WARRANT RECALL

YOU ARE HEREBY NOTIFIED that a bench warrant issued on Friday, July 17, 2009, against Mark Edward Allen III is being recalled. Please return warrant immediately to this office.

Dated: August 10th, 2009

Patty O. Weeks

Clerk Of The District Court

By: *[Signature]*

Deputy Clerk



Recall Warrant of Arrest

RECEIVED

HOUR 1653 A.M. P.M.

AUG 10 2009

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501

BY: *[Signature]*

DOC24 3/88

Served at 1144 this date. *[Signature]*

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

BY: [Signature]
NEZ PERCE COUNTY SHERIFFS OFFICE
LEWISTON, IDAHO 83501

STATE OF IDAHO
Plaintiff,

vs.

Mark Edward Allen III
106 Phinney
PO Box 507
Lapwai, ID 83540
Defendant.

DOB: [Redacted]
DL: [Redacted] ID

FILED

2010 JAN 13 AM 7 03

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

Case No: CR-2008-0003704

BENCH WARRANT

RECEIVED
SEP 17 2009
HOUR 02:11 A.M. PM.

TO ANY SWORN PEACE OFFICER IN THE STATE OF IDAHO:

The Defendant in the above captioned case, having failed to appear for the following court hearing:

Status Conference 9-17-09 at 1:15 p.m.
Judge: Carl B. Kerrick
Courtroom: Nez Perce County Courthouse

Said Defendant having been released upon his/her own recognizance;

NOW, THEREFORE, THIS IS TO COMMAND YOU to forthwith arrest the above named Defendant and bring him/her before this Court.

Dated: 9/17/2009

Judge: [Signature]

May be served: Day Only
 X Day or Night

Bond Amount: \$5000.00

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the above named Defendant on this
____ day of _____, _____.

Officer: _____

Agency: _____

Bench Warrant

DOC23 7/88

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

2010 APR 8 PM 3 45

STATE OF IDAHO,

Plaintiff,

vs.

Mark E. Allen III

Defendant.

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

CASE NO. CR08-3704

DEPUTY

COMMITMENT

TO THE SHERIFF OF NEZ PERCE COUNTY, STATE OF IDAHO:

The above-named Defendant, appearing before this Court this day, being informed by the
Court of the nature of the charge against him/her, to wit:

DUI

committed on or about the _____ day of _____, 20____, in said county,
and having been duly arraigned before the Court and having been duly found to be guilty and
having stated that no legal cause existed why judgment should not be pronounced against him/her
and no sufficient cause appearing to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is guilty of
said crime and that he/she be punished as follows: Imprisonment in the Idaho State Board of
Correction for a period of 3-5 years

NOW, THEREFORE, YOU, THE SAID SHERIFF OF NEZ PERCE COUNTY, STATE
OF IDAHO, are hereby commanded to receive the said Defendant and detain him/her in the Idaho
State Board of Correction, until this sentence is complied with.

DONE IN OPEN COURT this 8th day of April, 2010.

[Signature]

District Judge

Credit for time served
toward the fixed portion
of defendant's sentence.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Sentencing

Hearing date: 4/8/2010

Time: 2:55 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: F & V

Prosecutor: Sandra Dickerson

25545 Defendant present, in custody, with counsel.

25625 Court addresses Defendant. Court received and reviewed the PSI.

25747 Defendant indicates he has reviewed the PSI.

25759 Mr. Van Idour notes update to PSI.

25843 Mr. Van Idour addresses the Court.

30537 Ms. Dickerson addresses the Court.

30729 Defendant addresses the Court.

30856 Court addresses Defendant.

31240 Department of Corrections 3-5 years, credit for time served toward the fixed portion of Defendant's sentence, reimburse NPC Public Defender Fund in the amount of \$500.00, court costs \$115.50 and driving privileges suspended for 3 year period to begin after release from custody.

31340 Court recess.

RESET (Clerk, check if applicable)

ORIGINAL OF HIS DOCUMENT TO DOC

Assigned to:

Assigned:

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

2010 JAN 14 PM 2 03

Case No: CR-2008-0003704

CHARGE(s):

STATE OF IDAHO
Plaintiff,
vs.

Mark Edward Allen III
PO Box 507
Lapwai, ID 83540
Defendant.

PATTY O. WEEKS

DEPUTY

118-8004 F Driving Under The Influence

REQUIRED ROA CODES: (Enter the appropriate code)

PSIO1- Order for Presentence Investigation Report (only)

PSMH1- Order for Presentence Investigation Report and
Mental Health Assessment

PSSA1- Order for Presentence Investigation Report and
Substance Abuse Assessment

On this Thursday, January 14, 2010, a Pre-sentence Investigation Report was ordered by the Honorable Carl B. Kerrick to be completed by 4-1-10 for Court appearance on Thursday, April 08, 2010 at: 02:30 PM at the above stated courthouse.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under IC 19-2524 assessment(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):

- ☐ Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSMH1 ROA code); and/or
- ☐ Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSSA1 ROA code)

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

- ☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator: _____
- ☐ No evaluations are ordered. (PSIO1 ROA code)

DEFENSE COUNSEL: F & V

PROSECUTOR: Nancy Berger-Schneider

THE DEFENDANT IS IN CUSTODY: ☒ YES ☐ NO If yes where: _____

PLEA AGREEMENT: State recommendation

WHJ/JOC ☐ Probation ☐ PD Reimb ☐ Fine ☐ ACJ ☐ Restitution ☐ Retained Jurisdiction

☐ Other: _____

Date: 1-14-10

Signature: _____

Judge

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ NO ☐ YES

Name: _____ ☐ Male ☐ Female ☐ RACE: Caucasian ☐ Hispanic ☐ Other

Address: _____ City: _____ State: _____ ZIP: _____

Telephone: _____ Message Phone: _____ Work Phone: _____

Employer: _____ Work Address: _____

Date of Birth: _____ Social Security Number: _____

Name & Phone Number of nearest relative: _____

Date of Arrest: _____ Arresting Agency: _____

It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned Investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status/Scheduling Conference

Hearing date: 1/14/2010

Time: 1:21 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: F & V

Prosecutor: Nancy Berger-Schneider

12105 Defendant present, in custody, with counsel.
12201 Court addresses Defendant. PSI has not been completed.
12230 Court sets sentencing for 4-8-10 at 2:30 p.m. with PSI due 4-1-10.
12322 Mr. Fitzgerald addresses the Court.
12525 Court recess.

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO,

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

FILED

2010 JAN 13 AM 7 38

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

Case No: CR-2008-0003704

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status/Scheduling Conference

Thursday, January 14, 2010 01:15 PM

Judge:

Carl B. Kerrick

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, January 13, 2010.

Defendant: Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Mailed _____

Faxed
Hand-Delivered ☒ *nc jail*

Private Counsel: F & V
111 Main St Ste 301
Lewiston, ID 83501

Mailed _____

Faxed
Hand-Delivered ☐

Prosecutor: Nancy Berger-Schneider

Mailed _____

Faxed
Hand-Delivered ☐

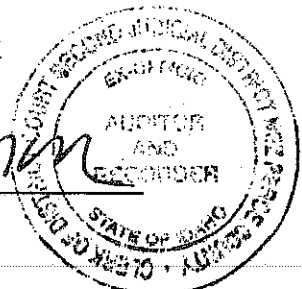
Dated: Wednesday, January 13, 2010

Patty O. Weeks

Clerk Of The District Court

By:

Patty O. Weeks
Deputy Clerk
DOC22 7/96



DEPUTY

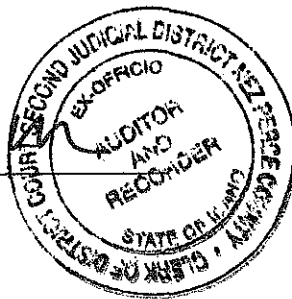
CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER was mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 12th day of April, 2010, on:

ISCI
P O BOX 14
BOISE ID 83707

PATTY O. WEEKS, CLERK

By: *P. O. Weeks*
Deputy



FILED

2010 APR 9 PM 4 07

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

CASE NO. CR08-03704

JUDGMENT OF CONVICTION

The above-named defendant, on April 8, 2010, was present for sentencing represented by Robert Van Idour and Sandra Dickerson present on behalf of the State of Idaho, after having been previously arraigned in Court upon the charge of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, Idaho Code §18-8004 (1)(a) and 18-8005(7), a felony, committed on or about May 4, 2008.

Defendant was duly informed by the Court of the nature of the charge and entered a plea of guilty. At the time fixed for pronouncing judgment, the defendant was then asked if there

JUDGMENT OF CONVICTION

1

existed any legal cause why judgment should not be pronounced, and Defendant replied that there was none. No sufficient cause being shown or appearing to the Court, the defendant was advised of the maximum and minimum punishment, right to a trial by jury, right to confront witnesses, the nature of the charge, whether the plea was a result of a plea bargaining and of what that agreement consisted, and that the Court is not bound by any promise or recommendation by either party as to punishment.

The Court hereby finds that the defendant understands the nature of the offense, and the consequences of the plea of guilty; that there is a factual basis for the plea of guilty; that the guilty plea was freely and voluntarily made; and that the defendant freely and voluntarily waived these rights in the above-captioned matter.

The Court rendered its judgment as follows:

WHEREAS, the defendant, was duly convicted of the above-mentioned crime, by Defendant's plea of guilty;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the Crime OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR ANY OTHER INTOXICATING SUBSTANCE, Idaho Code § 18-8004(1)(a) and 18-8005(7), a felony, and that Defendant is SENTENCED to the custody of the IDAHO STATE BOARD OF CORRECTION, Boise, Idaho, for a period of not less than THREE (3) years, nor more than FIVE (5) years, consisting of a minimum period of confinement of THREE (3) years during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct (except as provided by Section 20-101D, Idaho Code) and a subsequent indeterminate period of custody not exceeding TWO (2) years.

JUDGMENT OF CONVICTION

2

That Defendant shall receive credit for time already served toward the FIXED portion of Defendant's sentence; and,

That Defendant's driving privileges shall be suspended for a THREE (3) year period to begin after release from custody; and,

That Defendant shall pay court costs in the amount of \$115.50 and reimburse the Nez Perce County Public Defender Fund in the amount of \$500.00, for a total of \$615.50. That payments shall be mailed to Clerk of the Court, P O Box 896, Lewiston, Idaho 83501; and,

NOTICE OR RIGHT TO APPEAL

YOU, **MARK E. ALLEN III**, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED this 9th day of April, 2010 nunc pro tunc for April 8, 2010.



CARL B. KERRICK-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing JUDGMENT OF CONVICTION was:

✓ hand delivered via court basket, or

_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 12th day of April, 2010, to:

IDOC Central Records *-mailed*
1299 North Orchard Suite 110
Boise ID 83701

Robert Van Idour
111 Main Street, Ste 301
Lewiston ID 83501

Prosecuting Attorney
P.O. Box 1267
Lewiston ID 83501

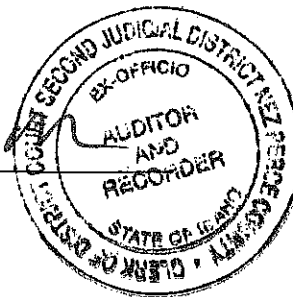
Lewiston Police Department

Probation and Parole

Driver Services *-mailed*
P O Box 34
Boise IDD 83731-0034

PATTY O. WEEKS, CLERK

By *P. O. Weeks*
Deputy



JUDGMENT OF CONVICTION

Kenick

FILED

2010 APR 13 PM 2 31

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN III,

DOR [REDACTED]

SS: [REDACTED]

Defendant.

CASE NO. CR08-03704

NOTICE OF CONVICTION

COMES NOW, DALE BUTTREY, Nez Perce County Sheriff, pursuant to Idaho Code 20-237 and gives Notice to Pat Ogden, Department of Correction, Central Records, 1299 North Orchard, Suite 110, Boise, Idaho 83706, that the above-named defendant was committed to the custody of the Idaho Department of Corrections as evidenced by the certified copy of the Judgment of Conviction attached hereto.

Pursuant to Idaho Code 20-237, you are further directed, as soon as possible, after receipt of this Notice to dispatch one or more guards, as may be necessary, to secure and convey the above-named

NOTICE OF CONVICTION

1


defendant to the Idaho State Penitentiary.

DATED this 13 day of April, 2010.


DALE BUTTREY
Nez Perce County Sheriff

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing NOTICE OF CONVICTION pursuant to Idaho Code § 20-237 was mailed on the 13 day of April, 2010, to Pat Ogden, Department of Correction, Central Records, 1299 North Orchard, Suite 110, Boise, Idaho 83706.


~~Sheriff~~ Deputy Sheriff
Nez Perce County, Idaho

August 5, 2010

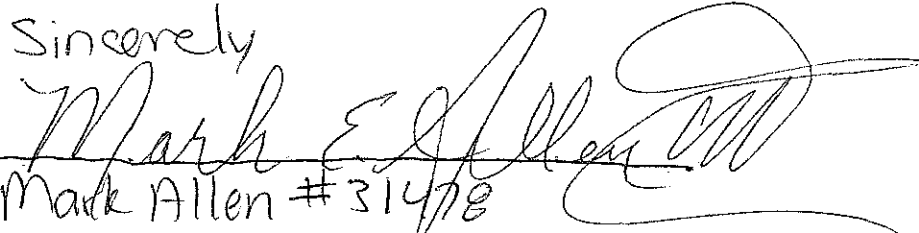
Dear Clerk of the Court,

Please find enclosed:

1. Motion for Rule 35 Relief
2. Memorandum in Support of Rule 35 motion.

Thank you for your time and consideration in this matter.

Sincerely,



Mark Allen #31478

ISCI MA-29-A

P.O. Box 14

Boise, ID. 83707

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

Defendant

FILED
2010 AUG 10 AM 10 02

PATTY O. WEEKS

CLERK OF THE DIST. COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN

Defendant.

Case No. CR08-3704

MOTION FOR RECONSIDERATION
OF SENTENCE UNDER I.C.R. 35

COMES NOW, Mark Allen, defendant in the above entitled case,
hereby moves this Court to reconsider its sentence imposed in
this matter under Idaho Criminal Rule 35.

The Court imposed a sentence of three (3) to five (5) years on
April 8, 2010. Mr. Allen requests the Court reconsider that
sentence and impose a sentence of time served and 5 years parole
or probation.

This Motion is supported by the Memorandum filed
contemporaneously.

DATED this 5th day of August, 2010.

Mark Allen

CERTIFICATE OF SERVICE

I, Mark Allen, hereby certify that on *the 5th day of August, 2010* I mailed a true and correct copy of the MOTION FOR RECONSIDERATION OF SENTENCE UNDER I.C.R. 35 to:

Nez Perce County Prosecutor
1109 F. Street
P.O. Box 1267
Lewiston, Idaho 83501

A handwritten signature in black ink, reading "Mark E. Allen" followed by a stylized flourish. The signature is written over a horizontal line.

010 AUG 13
PATTY O'NEALS
CLERK OF THE DISTRICT COURT
DEPUTY

116

CERTIFICATE OF MAILING

I hereby certify that a true copy of
the foregoing ORDER was mailed,
postage prepaid, by the undersigned at
Lewiston, Idaho, this 10th day of
August, 2010, to:

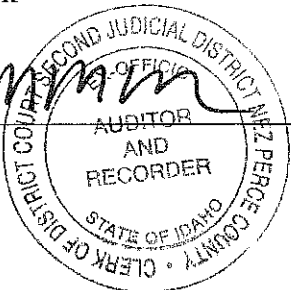
Robert Van Idour - *messenger*
200 Main Street
Lewiston ID 83501

Nancy Berger-Schneider - *messenger*
P.O. Box 1267
Lewiston, ID 83501

Mark Allen #31478
ISCI MA-29-A
P O Box 14
Boise ID 83707

PATTY O. WEEKS, Clerk

By *Patty O. Weeks*
Deputy

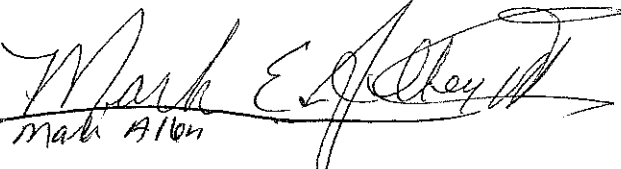


✓

Dear Clerk of Court,

Sorry, I did not put this in - I thought I had until
I got back to cell.

Thank you for your time and consideration in this matter.


Mark Allen

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

Defendant

FILED
2010 AUG 11 AM 9 56
2010 AUG 11 AM

PATTY O. WEEKS

CLERK OF DISTRICT COURT

DEPUTY PERCE
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ONEZ

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN

Defendant.

Case No. Cr 08-3704

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF SENTENCE UNDER I.C.R. 35

The Defendant, Mark Allen, submits this memorandum for the Court's review with regard to the Defendant's Motion to Reconsider Sentence Under I.C.R. 35.

I. SUMMARY OF ARGUMENT

For more than four (4) years, Mark Allen received medication for depression and for chronic pain. Being heavily medicated, caused Allen to be incoherent throughout the court proceedings.

Allen was represented by attorney Robert Vanidour, who failed to introduce vital information surrounding the circumstances of the crime, and Allen's future medical treatment; subjects that could have impacted the Court imposed sentence of three (3) to five (5) years in prison.

Currently, Allen is being denied every aspects of his medical care, and is suffering well beyond the Court intended punishment for the crime committed.

II. STANDARD OF REVIEW

A motion to reduce a sentence imposed in a legal manner is addressed to the sound discretion of the court. *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). Such a motion is a plea for leniency which may be granted if the original sentence was unduly severe for any reason. *Id.* A motion under I.C.R. 35 places upon the movant the burden of showing that the original sentence was unduly severe or illegal. *State v. Martinez*, 113 Idaho 535 (1937). In this case, the sentence is unduly severe.

A sentence, which falls within the statutory maximum, will not be disturbed unless a clear abuse of discretion is shown; a sentence may represent such abuse if it is unreasonable upon the facts of the case. *State v. Wickel*, 126 Idaho 578 (Ct. App. 1995). The court shall determine whether the sentence imposed was reasonable or unreasonable by applying the four criteria utilized in formulating the sentence: (1) protection of society, (2) deterrence to the defendant and others, (3) possibility of rehabilitation, and (4) punishment or retribution. *State v. Book*, 127 Idaho 352 (1995).

III. ARGUMENT

1. Mark's History and Characteristics.

On October 2, 2005, Angela Gaye Wilson was murdered for assisting the Eugene Oregon Police Department in rounding up known child pornographers. Mrs. Wilson was more to Mark than someone who received a reward for her work with the Eugene community, she was the mother of his children, and his wife.

On the same day Mark's wife is murdered, he felt an overwhelming dread overcome him, and he loses control of the

vehical he is driving, and crashes.

Mark sustained serious injuries from the automobile accident, to his spine, neck, left torso, face, hands and feet, and was hospitalized where he uderwent extensive reconstructive surgery which left his uper region paralyzed for sometime.

For the next couple of years, Mark's mother and children cared for him until he regained the use of his uper region, during which time, he slipped further into deprssion brought on by his wife's murder, and disfigurement.

Mark lived in severe pain, and depression, and he soon turned back to alcohol to help surpress the pain he felt from his injuries and memory of his wife.

It wasn't long before Mark stopped caring about his life, and started to feel worthless to his family and friends. Then after twleve (12) years of being sober behing the wheel of a vehicle, he broke his promise he had made to his deceased wife and family, by driving his friends car while intoxicated.

Mark is a good person, and a loving father and son, who made bad choices concerning his life. He understands that this DUI he is currently incarcerated for, was wrong, and could have resulted in something worse.

2. Plea Argreement.

The pain from the accident, caused Mark to remain heavily medicated during the course of the court proceedings, resulting in him being uncognitive throughout most of the hearings. He did not know what all took place until after coming to prison and being deprived of his medication.

Mark's attorney did not inform the Court about the extent of his medical injuries and required surgery that he would face while incarcerated. Yet Mark's attorney didn't explain much to him either.

Mark contends that the PSI was faulty. He is not that person depicted within the report.

As stated earlier, Mark does not pass responsibility for his actions. He is requesting only for the Court to consider all elements of the case when determining the length of his incarceration, raised herein his Motion for Rule 35.

3. Sentencing Objectives.

It is axiomatic that a term of confinement is reasonable to the extent necessary at the time of sentencing to accomplish the primary goal of protection of society and to achieve any and all of the related goals of deterrence, rehabilitation or retribution. A sentence longer than necessary to achieve these purposes is unreasonable. State v. Yoohill, 103 Idaho 565, 568 (Ct. App. 1982).

Incarceration for the duration of Mark's sentence is not necessary to protect society. Assuming for the purpose of argument that Mark is released by the Court, protection of society does not warrant his confinement for the three (3) to five (5) years. The combination of factors leading to Mark's drinking and driving, has been overcome by his children's needs, and his mother's depleting health, and his strong realization that he must change in order to lead by example for his children to have a better life, and be with his mother during her remaining year(s).

These factors alone are a deterrence for Mark to drive while intoxicated, and for him to seek professional help with his problem when he fully recovers from his operation.

4. Current Medical Issues.

In addition to Mark's life changes, he faces a serious threat of being paralyzed and being punished well beyond this Court's intentions.

The screws holding Mark's neck together have broken, causing him severe pain and requiring another operation that will once again leave him paralyzed in his upper torso.

The prison medical contractor, Correctional Medical Services (CMS) have realized that Mark must receive this operation, yet have postponed it for months, refusing to treat him, which risks permanent paralysis.

Furthermore, Mark suffers from arthritis throughout 80% of his body, which will only get worse, and he has to use a cane, and/or wheelchair to get around.

Mark has raised these concerns with CMS and prison personnel, however, they continue to deny him the care that the specialist that saw him ordered, choosing instead, to prolong suffering, resulting in cruel and unusual punishment, something Mark believes this Court did not intend him to undergo during his incarceration.

If or when Mark is provided this operation, he will be placed in the prison medical ward where prisoners suffer even more physical and emotional trauma from the CMS personnel failing to care for them. This fact is widely known, and after Doctor Ralph Heckard wrote an affidavit concerning the deliberate indifference

of CMS, the federal court will be appointing a speacial master or expert to investigate.

Mark has three CDs that document his medical condition, and his institutional medical file reveals the denial of his medical care.

Whereas, Mark faces years or lifetime, paralization, and whereas, he has been made to severely suffer since his imprisonment began, incarceration for one more day, or for the diration of his sentence, is not necessary to protect society, or to serve the purpose rehabilitation or retribution.

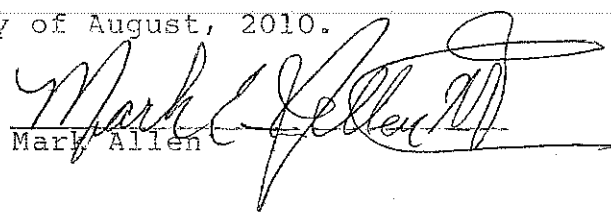
If the Court grants Mark's Rule 35 Motion, Mark will have to have the operation as soon as he is released. The interest of justice and society, is best served to have Mark pay for the operation, not the tax payers, and to be with his family during his recovery, not tortured by the inhumane treatment of CMS personnel.

Regarding the same medical contractor at ISCI, an earlier court ruled when granting a persons Rule 35 Motion, that the court did not sentence the person to that type of punsihment.

IV. CONCLUSION

Wherefore, Mark prays that this Court will conduct discovery into Mark's current and past medical condiditions to determine the whole truth of this matter, and order his release due to the inhumane treatment of CMS.

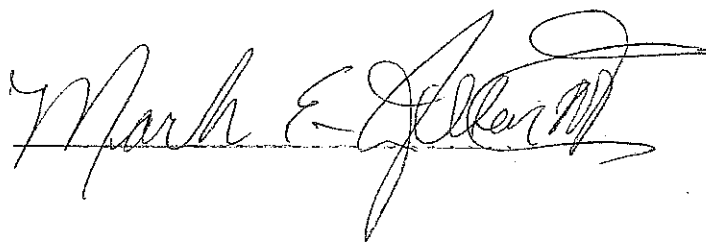
RESPECTFULLY Submitted this 5th day of August, 2010.


Mark Allen

CERTIFICATE OF SERVICE

I, Mark Allen, hereby certify that on August 5, 2010, I mailed a true and correct copy of the MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF SENTENCE UNDER I.C.R. 35 to:

Prosecutors Office
1109 F St.
P.O. Box 1267
Lewiston, Idaho 83501

A handwritten signature in cursive script, reading "Mark E. Allen". The signature is written in dark ink and is positioned above a horizontal line.

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

FILED

2010 SEP 15 AM 9 14

Defendant

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN,

Defendant.

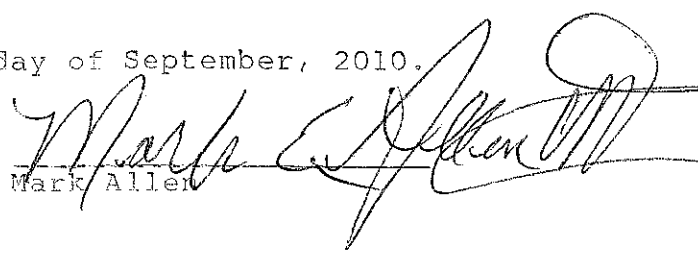
Case No. CR 08-3704

MOTION FOR WITHDRAWAL OF
GUILTY PLEA

COMES NOW, Mark E. Allen, defendant in the above entitled case, and pursuant to Rule 33(c) of the Idaho Court Rules, hereby Motions the Court for Withdrawal of his Guilty Plea entered on April 3, 2010.

This Motion for Withdrawal of Guilty Plea is supported by the Affidavit of Mark Allen.

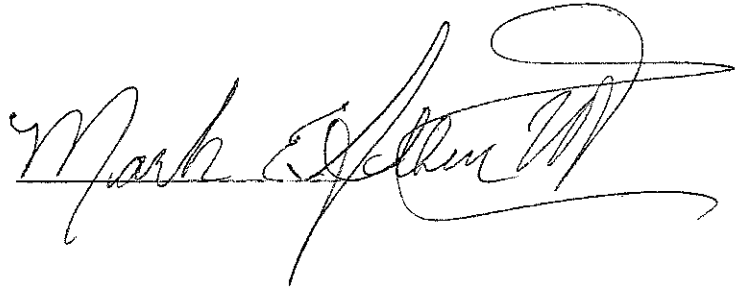
RESPECTFULLY Submitted this 10th day of September, 2010.


Mark Allen

CERTIFICATE OF SERVICE

I, Mark Allen, hereby certify that on September 10, 2010, I mailed a true and correct copy of the MOTION FOR WITHDRAWAL OF GUILTY PLEA to:

Nez Perce Prosecutor's Office
1109 F St.
P.O. Box 1267
Lewiston, Idaho 83501

A handwritten signature in black ink, appearing to read "Mark Allen", with a large, stylized flourish extending from the end of the name.

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

Defendant

FILED

2010 SEP 15 AM 9 14

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
	)	Case No. CR 08-3704
Plaintiff,)	
	)	AFFIDAVIT OF MARK ALLEN IN
vs.	)	SUPPORT OF MOTION FOR
	)	WITHDRAWAL OF GUILTY PLEA
MARK E. ALLEN,)	
)	
Defendant.)	

STATE OF IDAHO)
(ss:
County of Ada)

Mark Allen, a person over the age of eighteen and competent to testify, being duly sworn upon oath, deposes and states as follows:

1. On April 8, 2010, I entered a plea of guilty to a sentence of three (3) to Five (5) years in prison for the crime of Driving Under the Influence.

2. I am innocent of the crime I am imprisoned for.

3. During the court proceedings I was heavily medicated and did not understand any of the proceedings or what was transpiring in the courtroom.

4. My attorney failed to investigate my claims, would not listen to me, talk to witnesses, speak to me about my case, keep me inform of what was going on, and did not offer a defense.

5. I was coerced into enter the plea of guilty by my attorney, and would not have plead guilty if I knew what was going on.

6. There was never a competency hearing to determine if I was in the state of mind to enter into a plea of guilty.

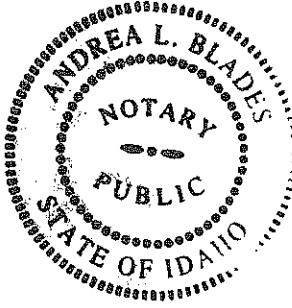
7. The PSI was faulty and inaccurate.

8. There was no evidence of my guilt of the DUI, and I believe the judge was bias in my case because I am native american.

FURTHER YOUR AFFIANT SAYETH NOT


Mark Allen

Subscribed and Sworn to before me this 10th day of September, 2010.

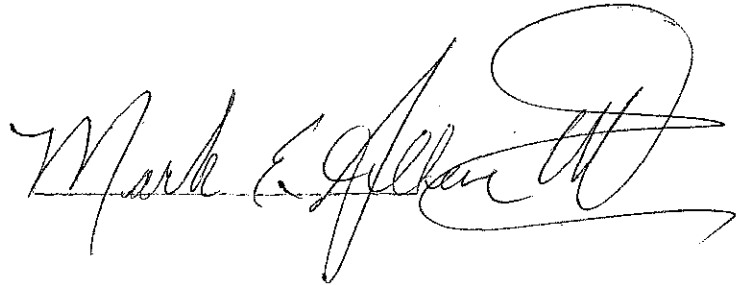



NOTARY PUBLIC FOR Ad Idaho
Residing at: Ada Co
Commission Expires: 03/04/2016

CERTIFICATE OF SERVICE

I, Mark Allen, hereby certify that on September 10, 2010, I mailed a true and correct copy of the AFFIDAVIT OF MARK ALLEN IN SUPPORT OF MOTION FOR WITHDRAWAL OF GUILTY PLEA to:

Nez Perce Prosecutor's Office
1109 F. St.
P.O. Box 1267
Lewiston, Idaho 83501

A handwritten signature in black ink, reading "Mark E. Allen". The signature is stylized with a large, looping initial "M" and a long, sweeping underline that extends to the right.

FILED

2010 SEP 15 AM 9 14

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

Defendant

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

MARK E. ALLEN,

Defendant.

Case No. CR 08-3704

MOTION FOR APPOINTMENT OF
COUNSEL

COMES NOW, Mark Allen, defendant in the above entitled case,
hereby Motions the Court for Appointment of Counsel to
represent him in the withdrawal of his guilty plea proceedings.

This Motion for Appointment of Counsel is supported by the
Affidavit of Mark Allen.

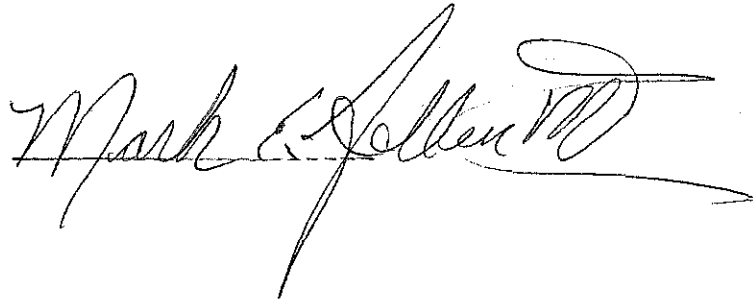
RESPECTFULLY Submitted this 10th day of September, 2010.

Mark Allen

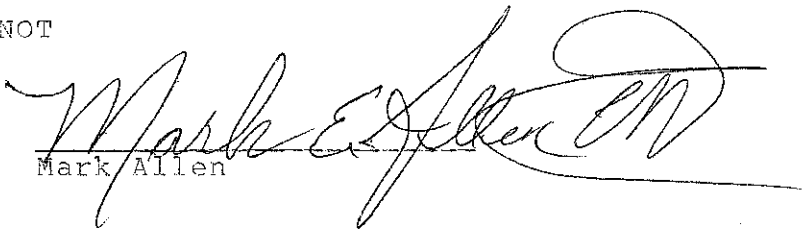
CERTIFICATE OF SERVICE

I, Mark Allen, hereby certify that on September 10, 2010, I mailed a true and correct copy of the MOTION FOR APPOINTMENT OF COUNSEL to:

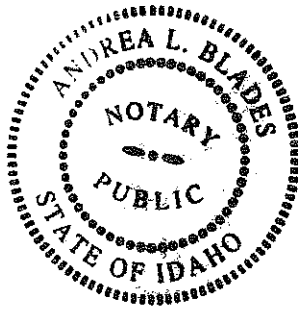
Nez Perce County Prosecutor's Office
1109 F St.
P.O. Box 1267
Lewiston, Idaho 83501

A handwritten signature in cursive script, reading "Mark Allen", followed by a large, stylized flourish that extends to the right and then loops back under the name.

FURTHER YOUR AFFIANT SAYETH NOT


Mark Allen

SUBSCRIBED AND SWORN to before me this 10th day of September, 2010.




NOTARY PUBLIC FOR: Idaho
Residing at: Ada Co
Commission Expires: 03/04/2016

CERTIFICATE OF SERVICE

I Mark Allen, hereby certify that on September 10, 2010, I mailed a true and correct copy of the AFFIDAVIT OF MARK ALLEN IN SUPPORT OF MOTION FOR WITHDRAWAL OF GUILTY PLEA to:

Nez Perce Prosecutor's Office
1109 F St.
P.O. Box 1267
Lewiston, Idaho 83501

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2010 SEP 15 AM 4 31

STATE OF IDAHO,

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

Case No: CR-2008-0003704

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status Conference
Judge:

Thursday, September 30, 2010
Carl B. Kerrick

11:00 AM

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, September 15, 2010.

Defendant: Mark Edward Allen III #31478
ISCI MA—29—A
P O Box 14
Boise ID 83707

Mailed ☐ x ☐ Hand Delivered ☐

Private Counsel: F & V
111 Main St Ste 301
Lewiston, ID 83501

Mailed ☐ *Faxed* Hand Delivered ☒ x ☐

Prosecutor: April Smith

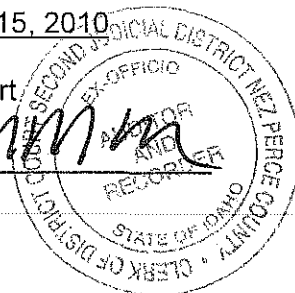
Mailed ☐ *Faxed* Hand Delivered ☒ x ☐

Dated: Wednesday, September 15, 2010

Patty O. Weeks
Clerk Of The District Court

By:

[Signature]
Deputy Clerk
DOC22 7/96



Inmate name Mark E. Allen III
IDOC No. 31478
Address P.O. Box 14
Boise, Id. 83707

FILED

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

IN THE DISTRICT COURT OF THE Second JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Nez Perce

State of Idaho

Plaintiff,

vs.

Mark E. Allen III

Defendant.

Case No. 2008-0003704

**MOTION FOR
TELEPHONE HEARING**

COMES NOW, Mark E. Allen III, Plaintiff, in the above entitled matter, and pursuant to Rule 7 (b) (4) of the Idaho Rules of Civil Procedure requests a hearing by telephone conference regarding his/her action for the following reasons:

1. He/she is currently incarcerated at ISC1 P.O. Box 14
Boise, Id. 83707;
2. He/she will be unable to appear before the court, unless the court sets the matter for telephone hearing or the court orders him/her transported to the court.

DATED This 21st day of September, 2010

Mark E. Allen III
Plaintiff

Inmate name Mark E. Allen III
IDOC No. 31478
Address PO Box 14
Boise, ID 83707

IN THE DISTRICT COURT OF THE Second JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Nez Perce

State of Idaho)
Plaintiff,)
vs.)
Mark E. Allen III)
Defendant.)

Case No. 2008-0003704

**ORDER FOR TELEPHONE
HEARING**

The _____ has filed a Motion for Telephone Hearing on his/her
_____, in the above-entitled matter and good cause appearing.

IT IS HEREBY ORDERED that:

1. The motion is GRANTED.
2. The matter is SET FOR HEARING by telephone on the _____ day of _____, _____ at _____. Both parties shall provide the court with a telephone number in advance where they can be contacted at the time indicated.
3. The Court will initiate the telephone call.

DATED this _____ day of _____, _____.

Judge

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 10/8/2010

Time: 11:00 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

- 110026 Defendant not present.
- 110030 Court addresses counsel. Defendant has filed Motion for Appointment of Counsel and Motion to Withdraw Guilty Plea.
- 110117 Mr. Radakovich addresses the Court and believes he will be supplementing Defendant's pleadings.
- 110331 Court sets status conference for 12-2-10 at 11 a.m.
- 110604 Court recess.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 12/2/2010

Time: 11:49 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

114908 Mr. Radakovich addresses the Court re: 2 week continuance.
114929 Court sets status conference for 12-23-10 at 11 a.m.
114937 Court recess.

Sec Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

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PATTY O. WEEKS

CLERK OF THE DISTRICT COURT
P. O. Weeks

DEPUTY

Citation No:

Case No: CR-2008-0003704

NOTICE OF APPOINTMENT OF NEW
PUBLIC DEFENDER

STATE OF IDAHO
Plaintiff,
vs.

Mark Edward Allen III
PO Box 507
Lapwai, ID 83540

Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED] ID

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Danny Radakovich PD 2011
1624 G St.
Lewiston, ID 83501
(208) 746-8162

Public Defender for the County of Nez Perce, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Mark Edward Allen III, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 10/1/10

P. O. Weeks
Deputy Clerk

Copies to:

- ☒ Public Defender
- ☒ Prosecutor

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 9/30/2010

Time: 11:01 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: F & V 2010

Prosecutor: April Smith

- 110155 Defendant not present.
- 110228 Court addresses counsel. Defendant has filed a motion to withdraw guilty plea and motion for appointment of counsel.
- 110329 Mr. Van Idour addresses the Court.
- 110346 Court appoints new public defender Danny Radakovich.
- 110358 Court sets status conference for 10-7-10 at 11 a.m.
- 110410 Court recess.

Mark Allen #31478
ISCI MA-29-A
P.O. Box 14
Boise, Idaho 83707

December 8, 2010

Danny Radakovich
Attorney at Law

RE: REPRESENTATION

Dear Mr. Radakovich,

I have been trying to contact you about what is going on with my case, but as of date, I have not been able to reach you.

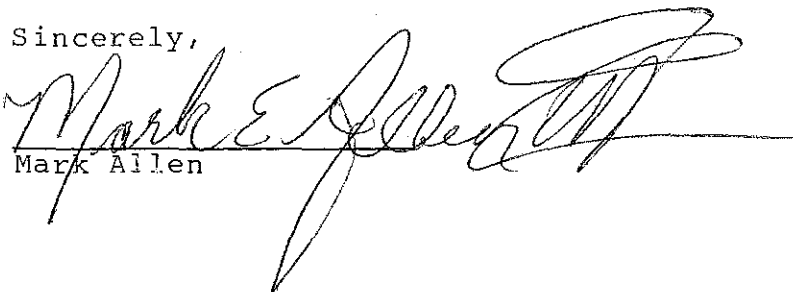
The letter regarding my questions about your reasoning behind changing my Rule 33c into a post conviction, has not been responded to. Why?

At this time, I do not want you to disregard my Rule 33c for a post conviction, mostly when you have not explained why you want to do this.

In addition, I would like to know if it is a conflict of interest for you to represent me in this matter being you are employed for the public defenders office?

Please either respond to my letters, or set up a time when I can call you. A copy of this letter has been mailed to the judge.

Sincerely,


Mark Allen

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

STATE OF IDAHO,

2011 FEB 14 PM 2 28

Plaintiff,

vs.

Mark Edward Allen III,

Defendant.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
Patty O. Weeks
DEPUTY

Case No: CR-2008-0003704

AMENDED
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Hearing
Judge:

Thursday, March 03, 2011 11:00 AM
Carl B. Kerrick

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Monday, February 14, 2011.

Defendant: Mark Edward Allen III
#31478 P O Box 14
Boise, ID 83707

Mailed ☒ Hand Delivered ☐

Private Counsel: Danny Radakovich PD 2011
1624 G St.
Lewiston, ID 83501

Mailed ☐ Faxed ☒ Hand Delivered ☒

Prosecutor: April Smith

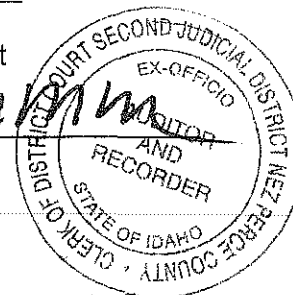
Mailed ☐ Faxed ☒ Hand Delivered ☒

Dated: Monday, February 14, 2011

Patty O. Weeks
Clerk Of The District Court

By:

Patty O. Weeks
Deputy Clerk
DOC22 7/96



COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 12/22/2010

Time: 1:18 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

11809 Defendant not present.
11821 Mr. Radakovich requests continuance.
11835 Court continues this matter until 1-6-11 at 11 a.m.
11847 Court recess.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 1/6/2011

Time: 11:40 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

114009 Defendant not present (incarcerated Department of Corrections)
114021 Mr. Radakovich requests 2 week continuance.
114032 Court sets another status conference for 1-20-11 at 11 a.m.
114055 Court recess.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 1/20/2011

Time: 11:13 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

- 111339 Defendant not present (incarcerated Department of Corrections).
- 111351 Court and counsel meet at sidebar.
- 111708 Mr. Radakovich addresses the Court and requests Court set another status conference in a few weeks. Mr. Radakovich has requested a copy of the recording for the change of plea hearing.
- 111822 Court sets another status conference for 2-3-11 at 11 a.m.
- 111915 Court recess.

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Status Conference

Hearing date: 2/3/2011

Time: 11:09 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: April Smith

- 110955 Defendant not present (incarcerated Department of Correction)
- 111006 Mr. Radakovich addresses the Court and believes he will be ^{ready} reading to argue this matter in a few weeks.
- 111106 Court sets hearing for 2-17-11 at 11 a.m.
- 111157 Court recess.

✓

FILED

2011 FEB 24 PM 12 06

DANNY J. RADA KOVICH
A Felony Public Defender
Attorney for Defendant
1624 G Street
Lewiston, ID 83501
(208) 746-8162
Idaho State Bar #1991

PATTY O. WEEKS
CLERK OF THE DIST. COURT
P. O. Weeks
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STATE OF IDAHO,	)	CASE NO. CR 08-3704
)	
Plaintiff,	)	AMENDED MOTION FOR
	)	WITHDRAWAL OF PLEA OF GUILTY
v.	)	AND MOTION FOR POST-CONVICTION
	)	RELIEF
MARK E. ALLEN,)	
)	
Defendant.)	

COMES NOW the defendant the above-entitled matter, by and through his attorney of record herein, and hereby moves the court for an order, in the alternative, as follows:

1. To withdraw his plea of guilty entered in this matter on or about April 8, 2010;
2. To set aside his judgement of conviction and grant him a trial in this matter;

This motion is based on the papers and pleadings on file herein and upon the affidavit filed by the defendant in support of his initial motion for withdrawal of plea and the motion is

AMENDED MOTION FOR WITHDRAWAL
OF PLEA OF GUILTY AND MOTION FOR
POST-CONVICTION RELIEF

made on the following grounds:

1. With respect to the motion to withdraw the plea, the motion is based on Rule 33(c), I.C.R., and is made on the grounds that, under the circumstances present, the plea was not intelligently made and to allow the plea to stand would constitute a manifest injustice;

2. With respect to the motion for post-conviction relief, the motion is based on Idaho Code §19-4901 and is made on the grounds that the defendant believes: (a) he was not adequately represented by his prior counsel; (b) there exist material facts never presented which require a vacation of the conviction and sentence; (c) that the conviction and judgement are subject to collateral attack.

DATED this 24th day of February, 2011.



Danny J. Radakovich
Attorney for Defendant

I hereby certify that a true and correct copy of the foregoing was hand-delivered to:

*Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501*

on this 24th day of February, 2011.



Danny J. Radakovich

AMENDED MOTION FOR WITHDRAWAL
OF PLEA OF GUILTY AND MOTION FOR
POST-CONVICTION RELIEF

A Felony Public Defender

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

February 24, 2011

Nez Perce County Courthouse
Attn: Teresa
1230 Main Street
Lewiston, ID 83501

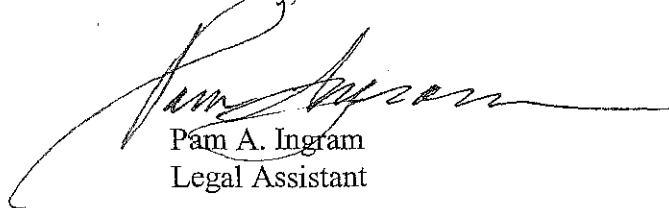
RE: STATE v. MARK E. ALLEN
CASE NO. CR08-3704

Dear Teresa:

Accompanying this letter please find the original and my blue file copy of an amended motion for withdrawal of plea of guilty and motion for post-conviction relief in the above-named matter. Please file the original and conform the blue copy and return to my office.

Thank you for your courtesy in this matter.

Sincerely,



Pam A. Ingram
Legal Assistant

PAI:me

cc: Mark E. Allen (w/encl.)
Nez Perce County Prosecutor (h/d/w/encl.)

COURT MINUTES

CR-2008-0003704

State of Idaho vs. Mark Edward Allen III

Hearing type: Motion to Withdraw Guilty Plea

Hearing date: 3/3/2011

Time: 11:54 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Danny Radakovich PD 2011

Prosecutor: Sandra Dickerson

115459 Defendant not present (incarcerated Department of Corrections).
115504 Mr. Radakovich addresses the Court re: Defendant's Motion to Withdraw
Guilty Plea.
120308 Ms. Dickerson addresses the Court.
120526 Mr. Radakovich responds.
120645 Court addresses counsel.
121217 Court denies motion.
121227 Court recess.

FILED

2011 MAR 17 AM 8 51

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 MARK E. ALLEN,)
)
 Defendant.)

CASE NO. CR 08-3704

ORDER DENYING AMENDED MOTION
FOR WITHDRAWAL OF PLEA OF
GUILTY AND MOTION FOR POST
CONVICTION RELIEF

THE DEFENDANT having filed an amended motion to withdraw his plea of guilty and a motion for post-conviction relief, said motions having come on for hearing on the 3rd day of March, 2011, argument having been made, the court having considered the matters and verbally announced its decision and good cause appearing therefor;

IT IS HEREBY ORDERED that the defendant's amended motion to withdraw his plea of guilty and motion for post-conviction relief be, and the same hereby are, **DENIED**.

DATED this 17th day of March, 2011.



Carl B. Kerrick
District Judge

ORDER DENYING AMENDED MOTION
FOR WITHDRAWAL OF PLEA OF
GUILTY AND MOTION FOR
POST-CONVICTION RELIEF

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on the 17th day of March, 2011, the undersigned
(Deputy) clerk of the above-entitled court hand-delivered true and correct copies of the Order to
which this certificate is attached to:

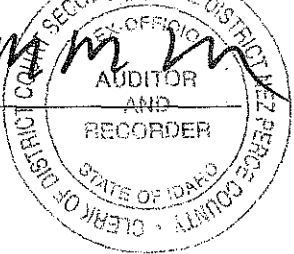
Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501

Danny J. Radakovich
1624 G Street
Lewiston, ID 83501

DATED this 17th day of March, 2011.

PATTY O. WEEKS, Clerk

By *Patty O. Weeks*
Deputy



ORDER DENYING AMENDED MOTION
FOR WITHDRAWAL OF PLEA OF
GUILTY AND MOTION FOR
POST-CONVICTION RELIEF

Danny J. Radakovich
Radakovich Law Office
Attorney for Defendant
1624 G Street
Lewiston, Idaho 83501
(208) 746-81620
Idaho State Bar #1991

FILED

2011 MAR 18 PM 4 25

PATTY C. WEEMS
CLERK OF THE DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STATE OF IDAHO,	)	CASE NO. CR08-3704
)	
Plaintiff,	)	NOTICE OF APPEAL
)	
vs.	)	FILING FEE: N/A
)	
MARK E. ALLEN,)	
)	
Defendant.)	

TO: THE ABOVE-NAMED PLAINTIFF, STATE OF IDAHO, AND ITS ATTORNEYS, NEZ PERCE PROSECUTOR'S OFFICE, P.O. BOX 1267, LEWISTON, ID 83501, AND LAWRENCE WASDEN, ATTORNEY GENERAL, ATTN: CRIMINAL DEPARTMENT, P. O. BOX 83720, BOISE, IDAHO 83720-0010, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named defendant, Mark E. Allen, appeals, against the above-named plaintiff to the Idaho Supreme Court, from the Order Denying Amended Motion for Withdrawal of Plea of Guilty and Motion for Post-Conviction Relief entered in the above-entitled matter on March 17, 2011.
2. That the party has a right to appeal to the Idaho Supreme Court and the Order described in paragraph 1, above, is an appealable order under and pursuant to Rule 11(c)(9), I.A.R.

NOTICE OF APPEAL

1

3. A preliminary statement of the issues which the appellant may assert on appeal is as follows:

- a. The court erred in refusing to allow the withdrawal of the guilty plea;
- b. The court erred in denying relief based on ineffective assistance of counsel;
- c. This preliminary statement shall not preclude the appellant from asserting other issues on appeal.

4. No order has been entered sealing all or any portion of the record.

5. a. Is a reporter's transcript requested? Yes., the transcript of the argument on the motion.

b. The appellant requests the preparation of the following portions of the reporter's transcript in addition to the standard reporter's transcript per Rule 25(c), I.A.R., which is requested in both hard copy and electronic format;

(1) The transcript of the argument on the motion.

6. The appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R.: Copy of motion and amended motion for relief and the order denying the motion for relief.

7. I certify:

a. That service of a copy of this notice of appeal upon the reporter has been made upon Nancy Towler, c/o Nez Perce County Court, Lewiston, Idaho 83501..

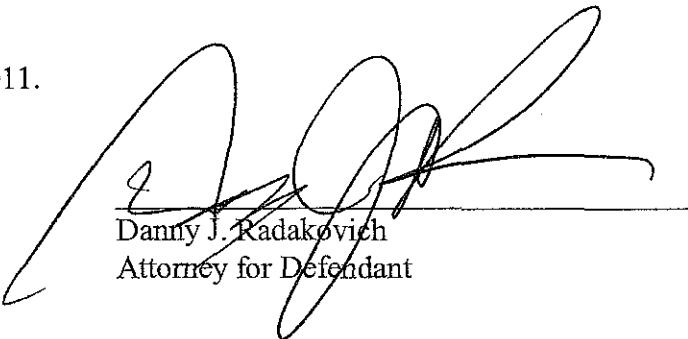
b. That, as a public defender client, the defendant has no obligation to pay a fee for preparation of the transcript.

c. That, as a public defender client, the defendant has no obligation to pay a fee for preparation of the clerk's record.

d. That no appellate filing fee need be paid, since this is a criminal proceeding.

e. That service has been made on all parties required to be served pursuant to Rules 17 and 20, I.A.R.

DATED this 15th day of March, 2011.



Danny J. Radakovich
Attorney for Defendant

I hereby certify that a true and correct copy of the foregoing instrument was hand-delivered to:

*Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501*

*Nancy Towler
Nez Perce County Courthouse
Lewiston, ID 83501*

and that a true and correct copy thereof was mailed, first-class postage prepaid:

*Lawrence Wasden, Attorney General,
Attn: Criminal Department
P. O. Box 83720
Boise, Idaho 83720-0010*

on this 15th day of March, 2011.



Danny J. Radakovich

DANNY J. RADAKOVICH
A Felony Public Defender
Attorney for Defendant
1624 G Street
Lewiston, ID 83501
(208) 746-8162
Idaho State Bar #1991

FILED
2011 MAR 18 PM 4 25

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

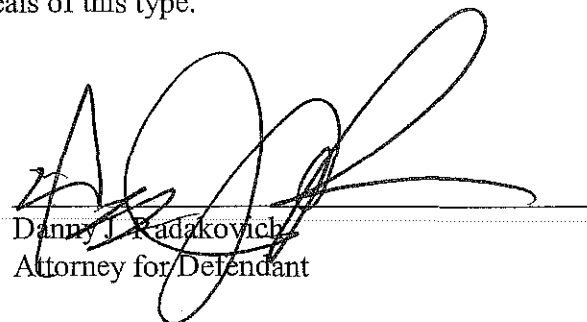
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,	)	CASE NO: CR08-3704
)	
Plaintiff,	)	MOTION TO APPOINT
	)	APPELLATE PUBLIC DEFENDER
v.)	
)	
MARK E. ALLEN,)	
)	
Defendant.)	

COMES NOW the defendant the above-entitled matter, by and through his attorney of record herein, and hereby moves the court for an order appointing the appellate public defender to represent said defendant in the appeal on file herein.

This motion is based upon Idaho Code §19-870 and is made on the grounds that the Idaho Code provision in question requires that public defender clients such as this defendant are to be represented by the appellate public defender in appeals of this type.

DATED this 18th day of March, 2011.



Danny J. Radakovich
Attorney for Defendant

MOTION TO APPOINT
APPELLATE PUBLIC DEFENDER

I hereby certify that a true and correct copy of the foregoing was hand-delivered to:

*Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501*

and that a true and correct copy thereof was mailed, first-class postage prepaid:

*Lawrence Wasden, Attorney General,
Attn: Criminal Department
P. O. Box 83720
Boise, Idaho 83720-0010*

on this 18th day of March, 2011.



Danny J. Radakovich

RECEIVED MAR 18 2011

LAW OFFICES OF

A Felony Public Defender

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

March 18, 2011

Nez Perce County Courthouse
Attn: Teresa
1230 Main Street
Lewiston, ID 83501

**RE: STATE v. MARK ALLEN
CASES NOS. CR 08-3704**

Dear Teresa:

Accompanying this letter please find the originals and my blue file copies of a *Notice of Appeal* and a *Motion to Appoint Appellate Public Defender* in the above entitled matter. Please file the originals then conform the blue copies and return them to my office.

Also enclosed you will find the original, three (3) white copies, and my blue file copy of an *Order Appointing Appellate Public Defender* in conformity with the motion. Please present the order to Judge Kerrick and, once signed, please conform all copies. Please mail one (1) white copy to the Idaho Appellate Public Defender and one (1) white copy to the Attorney General in the stamped, addressed envelopes I have provided, then deliver the other white copy to the prosecutor and my blue file copy to me.

Thank you for your courtesy in this matter.

Sincerely,



Sheryl A. Kiely
Paralegal

SAK:me
Enclosures

cc: Nez Perce County Prosecutor (w/ encls)
Lawrence Wasden, Attorney General (w/ encls)
Mark Allen (w/ encls)

FILED

2011 MAR 21 AM 9 42

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

DANNY J. RADAKOVICH
A Felony Public Defender
Attorney for Defendant
1624 G Street
Lewiston, ID 83501
(208) 746-8162
Idaho State Bar #1991

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STATE OF IDAHO,	)	CASE NO: CR08-3704
)	
Plaintiff,	)	ORDER APPOINTING
	)	APPELLATE PUBLIC DEFENDER
v.)	
)	
MARK E. ALLEN,)	
)	
Defendant.)	

THE DEFENDANT having appealed in this matter, the defendant being entitled to the services of the appellate public defender in appeals to the Idaho Supreme Court/Court of Appeals, a motion having been filed to appoint the appellate public defender herein, the court having considered the motion, and good cause appearing therefor;

IT IS HEREBY ORDERED that the office of the appellate public defender be, and it hereby is, appointed to represent the above-named defendant in the appeal to the Idaho Supreme Court/Court of Appeals in this matter.

ORDER APPOINTING
APPELLATE PUBLIC DEFENDER

DATED this 21st day of March, 2011.


Carl B. Kerrick
District Judge

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on the 25th day of March, 2011, the undersigned
(Deputy) clerk of the above-entitled court hand-delivered true and correct copies of the Order to
which this certificate is attached to:

Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501

Danny J. Radakovich
1624 G Street
Lewiston, ID 83501

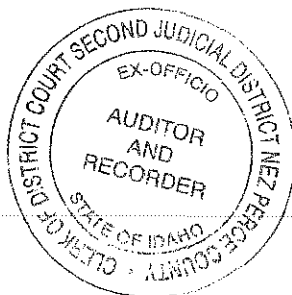
and that a true and correct copy thereof was mailed, first-class postage prepaid, to:

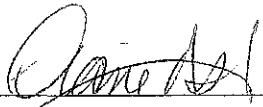
Idaho State Appellate Public Defender
3647 Lake Harbor Lane
Boise, ID 83703

Lawrence Wasden, Attorney General,
Attn: Criminal Department
P. O. Box 83720
Boise, Idaho 83720-0010

DATED this 25th day of March, 2011.

PATTY O. WEEKS, Clerk



By 
Deputy

ORDER APPOINTING
APPELLATE PUBLIC DEFENDER

IN THE DISTRICT COURT OF THE SECOND JUICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 38665-2011
Plaintiff-Respondent,)	
)	
v.)	
)	
MARK EDWARD ALLEN, III,	)	CERTIFICATE OF EXHIBITS
)	
Defendant-Appellant.)	

I, PATTY O. WEEKS, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal and additional documents that were requested.

I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

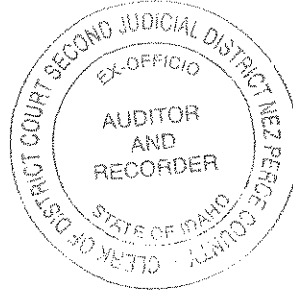
2. That the following will be submitted as a confidential exhibit to the record:

Presentence Report dated March 17, 2010

CERTIFICATE OF EXHIBITS

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court the 13th day of May 2011.

PATTY O. WEEKS
Clerk of the District Court



By 
Deputy Clerk

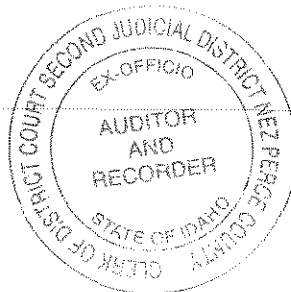
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 38665-2011
Plaintiff-Respondent,)	
)	
v.)	
)	
MARK EDWARD ALLEN, III,	)	CERTIFICATE OF RECORD
)	
Defendant-Appellant.)	

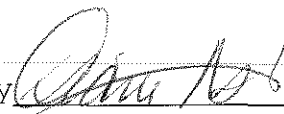
I, PATTY O. WEEKS, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by counsels.

I, FURTHER CERTIFY, that the notice of Appeal was filed in the District Court on the March 18, 2011.

PATTY O. WEEKS
Clerk of the District Court



By


Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
	)	SUPREME COURT NO. 38665-2011
Plaintiff-Respondent,)	
)	
v.)	
)	
MARK EDWARD ALLEN, III,	)	CERTIFICATE OF SERVICE
)	
Defendant-Appellant.)	

I, PATTY O. WEEKS, the undersigned authority, do hereby certify
that I have personally served or mailed, by either United States
Mail or Electronic Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

LAWRENCE G. WASDEN

mhuskey@sapd.state.id.us

patricia.miller@ag.idaho.gov

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, ID

BOISE, ID

PATTY O. WEEKS

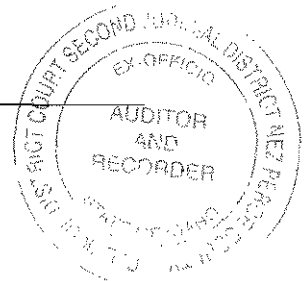
Clerk of the District Court

Date of Service

5/27/2011

By

Christine A. ...
Deputy



CERTIFICATE OF SERVICE